Supreme Court, U.S.
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OFFICE OF THE CLERK

No. _____

In The
SUPREME COURT OF THE UNITED STATES

LESTER R. RAMER, et al.,
Petitioner-Appellant-Petitioner,

v.

DOUGLAS H. SHULMAN, COMMISSIONER, INTERNAL REVENUE SERVICE, et al.,
Respondent-Appellee-Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

ORIGINAL PETITION FOR A WRIT OF CERTIORARI

WITH APPENDIX A

LESTER R. RAMER
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Questions Presented

Signature authority—appellate court

Actual use

1. Did any appellate court (deputy) clerk actually sign an order?

Source of Clerk's signature authority

2. Does 28 U.S.C. § 711 violate Due Process or Separation of Powers?

3. Does 28 U.S.C. § 956 violate Due Process or Separation of Powers?

4. Does FED. R. APP. P. 27(b) violate Due Process or Separation of Powers?

5. Does 8TH CIR. R. 27B violate Due Process or Separation of Powers?

Compelled consent

6. Does an appellate (deputy) clerk have decision-making authority, at all?

7. If so, what besides unanimous consent provides that authority?

8. May the appellate court compel consent to non-judicial decision-making?

Signature authority--"tax court"

Non-judicial decision-makers

9. Did any STJ ever have signature authority?

10. Does TCR 182 violate Due Process?

11. Does TCR 183 violate Due Process?

12. Does irc § 7443A violate Due Process?

13. Did any clerk ever have signature authority?

Bench and Bar

14. May the "tax court" strike, *sua sponte*, a party/capacity?

15. Is COLVIN a "party" for purposes of TCR 51?

16. Is COLVIN's TCR 51 "order" to replead/amend vague?

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20. Is the "unfiling" "order" of 24 October 2008

lawful?

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22. Is the "unfiling" "order" of 19 March 2009 lawful?

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26. Is the "unfiling" "order" of 29 December 2009 lawful?

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28. In a "fraud" penalty case, what is the *de facto* party alignment, even in the "tax court?"

Evidentiary burden

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30. In a "fraud" penalty case, what must comm'r prove to establish his/its threshold burden?

31. Where's comm'r's evidence establishing his/its threshold burden to any standard, much less for summary judgment?

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37. May Ramer legally be denied his discovery?

38. Do TCRs 70(a)(2) and 90(a) violate Due Process?

39. Does TCR 91 violate public policy?

Parties

Petitioner

LESTER R. RAMER, and Lester R. Ramer

Respondent(s)

DOUGLAS H. SHULMAN, COMM'R, INTERNAL REVENUE SERVICE, and Douglas H. Shulman, Comm'r, Internal Revenue Service.

UNITED STATES

UNITED STATES OF AMERICA

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Petition for a Writ of Certiorari

Ramer petitions for a writ of certiorari to the federal appellate court as follows:

Citations to decisions below

None.

Jurisdiction

(i) Date of judgment on appeal
30 September 2010 [+90: 29 Dec 2010].
No. 10-1584.

(ii) Extension N/A

(iii) Rule 12.5 N/A

(iv) Statutes, Jurisdiction
28 U.S.C. §§ 1254(1), 2101(c).

(v) Regarding Rule 29.4(b)
Purported United States agency is a party. All activity in the "tax court" and the appellate court.

No Oral Argument Requested

Oral argument is not expected to aid in the resolution of this matter.

Statement of the Case

Tax Court Jurisdiction

26 U.S.C.A. § 7442 (68A Stat. 879 (1954)).

"Redetermination" is possible. But, comm'r, the *de facto* **plaintiff**, who alleged "fraud," never proved standing. *Defenders of Wildlife* ("injury in fact"). *See also* BOGERT § 50 at 102 ("The burden of proof is on the party who asserts the existence of a trust."); BOGERT § 871 at 156 and nn.2, 3 (beneficiary must plead and prove the existence of the fiduciary duty); *Mitchell II*, 463 U.S. at 225 [1] (citing RESTATEMENT (SECOND) OF TRUSTS § 2 cmt. h) (elements of a trust).

Signature authority—appellate court

Ramer repeatedly objected to non-judicial decision-making.

Ramer objected to non-judicial decision-making on appeal starting with his Notice of Appeal. The appellate court bulldozed Ramer's overt objections.

Gans' first "ruling," 30 April 2010, "orders" that Ramer's motion to correct, modify, or reconstruct the Record be decided by the panel. Did Gans exercise *judicial* discretion? Yes. It's the motions panel's decision to make, not the clerk's. No § 451 judge has the authority to delegate the § 451 power. Why is it a clerical "ORDER," not a clerical Notice, unless the Clerk made the decision?

Ramer objected to that first act of non-judicial decision-making via his motion to strike. On 19 May, citing 8TH CIR. R. 27B, Gans denied Ramer's motion, rendering manifest the intent to compel consent.

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[1] This ***strongly*** suggests larceny, thus a *constructive* trust ("relationship ***necessarily*** arises;" "property ***belonging to*** the Indians"). May all Americans benefit from the lesson.

Ramer objected to the court's habitual and defiant bulldozing of his objection to non-judicial decision-making via his motion to strike §§ 711 and 956, FED. R. APP. P. 27(b), and 8TH CIR. R. 27B. As of 9 June, Gans "ordered" that motion to the panel. On 30 September, Gans also entered "judgment."

Did a clerk sign an order?

Three documents say, "ORDER;" the fourth, "JUDGMENT." Gans signed each for the COURT. Ramer's mixed question of fact and law arises from the case style.

Regarding the challenged statutes and rules.

No statute exists that grants any office of Clerk any ***judicial*** decision-making authority. *Cf.* § 451 *with* § 711 *and* § 956. No statute exists that even binds a Clerk by oath to the laws of the United States. *Cf.* § 453 *with* § 951.

No *procedural* rule creates an office, much less expands an office created legislatively. Thus, no judicially-crafted *procedural* rule allows a judge to expand his own legislatively-defined office, so as to allow delegation of ***judicial*** power, much less to expand the office of clerk to make it a § 451 office (sans the § 453 oath).

The statutes aren't the problem. The Rules and the construction of them purport to justify compelled consent, not only to non-judicial decision-making but also to complete structural upheaval.

Compelled consent.

The congress have never endowed ***any*** clerical office with ***judicial*** decision-making authority. Thus, *if* a clerk has ***non-judicial*** decision-making authority, such arises only by unanimous consent. Ramer overtly never consented.

Signature authority—"tax court"

Ramer repeatedly objected to non-judicial decision-making.

Ramer's objection is on practically every document he submitted. Nonetheless, both STJs and clerks purported to sign "orders," some of which are "secret" "orders," i.e., not filed when "signed." Ramer challenges TCRs 182 and 183 and irc § 7443A.

The "case style" mushroom cloud!

The focus here is the lack of signature authority to strike parties/capacities unilaterally, if at all.

From Day One, Ramer asserted both his Proper Capacity and his FEDERAL CAPACITY in the case style. *See* [1], [2], [7], [8], [9], [10], [11], [12], [13], [14], [15], [16], [18], [20], [21], [22], [36], [37], [38], and [42]. Obviously, since those *are* still in what's left of the Record, they were filed.

Sua sponte, unilaterally, without Notice or opportunity to respond, and without basis in fact or law, COLVIN initially struck out the FEDERAL CAPACITY, [4], *see also* [3], thereby "ordering" (advising?!) [2] Ramer to appear solely in the Proper Capacity, i.e., not to appear at all. Considering the "order" illegal for several reasons, Ramer declined to yield to that form of extortion.

Unilaterally striking the *Proper Capacity*, i.e., the exact **opposite** of COLVIN's illegal "order," the "tax court" defaced [7], [8], [9], [11], [13], [14], [15], [16], [20], [21], [22], [35], [36], [37], and [38]. Ramer didn't yield to that form of extortion, either.

Considering their illegal striking "orders" ***valid***,

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[2] This ***is*** an alleged trust matter, and, as is superabundantly clear despite any facts that prove the conclusion, COLVIN considered Ramer a bona fide fiduciary.

the "tax court" proceeded to lose its/their mind(s) completely, "unfiling" as the whim suited, based on Ramer's continued assertion of both capacities in the case style. By the time the "case style" mushroom cloud had dissipated, the "tax court" had "unfiled" at least 14 documents, which count doesn't include the individual Exhibits and Attachments also "unfiled." *See* Ramer's motion to correct, etc., the Record. Relevant to the "unfiling" madness are [25], [31], and [32], in which unconsented-to clerks struck the FEDERAL CAPACITY. The "tax court" justifies the "unfilings" on the "caption" issue. [3] Humorously, they were so cock and bull sure about the "problem" that they never did make up their minds on *which* capacity justified their Record-tampering!

Compelled waiver of defenses.

Without Notice or opportunity to be heard, COLVIN "ordered" Ramer to amend. [6]. A problem with COLVIN's habitual repleading "orders" in the **"taxpayer" means "fiduciary"** cases is that COLVIN is not a party. TCR 51 allows ***parties*** to object to parties. Thus, COLVIN's *sua sponte* use of TCR 51 is facially unlawful, even by the "tax court's" own stinkin' rules. That presumes, of course, that COLVIN *wasn't* a party. If COLVIN ***was/is*** a party, then he has no signature authority as a judge.

While COLVIN's TCR 51 "order" is facially vague, there's little doubt that what he intended to compel was the waiver (cessation) of Ramer's defense. Even still, COLVIN pointed to no specific issues or problems, whatsoever.

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[3] "Mailed" means "filed." irc § 7502. ***But***, the "tax court's" last two "unfilings" say that by the time the documents arrived in DC, the case was "closed."

No agency proved.

Ramer also objected to the attorneys' signatures. The Record contains no evidence of any actual or apparent agency.

Contents of the Record

Summary judgment context.

The standard on review, whether of the whole Record or just what's left of it, is *de novo* due to both summary judgment and trust law. Here, Ramer, the alleged fiduciary, was in no way allowed access to the "tax court." Thus, the problems with this Record instantly exceed "mere" matters of evidence.

Criminal defacing.

The "tax court's" habitual, incessant defacing is criminal Record-tampering and denial of access, among other crimes. Also, it's mindless, given that Ramer has **100% control** over the capacity he asserts in the suit he's compelled to file. Being so cock and bull sure they knew everything about it, rather than listen to Ramer's "message" on the point, they shoved peanut butter in their ears, ***repeatedly***.

Criminal "unfiling."

The "tax court's" habitual, incessant "unfiling" madness is criminal Record-tampering and denial of access, among other crimes. There are at least nine "unfiling" "orders:" **2008:** 12 May and 24 October; **2009:** 2 March, 19 March, 26 March, 26 October, 4 December, and 29 December; and **2010:** 7 January. At least five of those were not filed, i.e., they were "secret" "orders." If the denial of Ramer's motion to correct, etc., the Record stands, then they are *still* "secret" "orders" (by unconsented-to non-judicial decision-makers). The "tax court" "unfiled" at least

14 of Ramer's documents, including objections to non-judicial decision-making (hence, compelled consent) and verified documents (hence, irrebuttable presumptions). The count of 14 doesn't include the individual Exhibits or Attachments.

Party alignment

What ***is*** the party alignment in "tax court?" Is it any different where comm'r alleges "fraud?" Ramer is satisfied he's the *de facto* **defendant**, either way.

Evidentiary burden

It's clear that in the "normal," civil "tax" case in the "tax court," the evidentiary burden is shifted before the matter even starts. In this case, likely the last of the **"taxpayer" means "fiduciary"** cases to be filed in the "tax court," comm'r alleged "fraud." Everyone, even the "tax court," recognized that comm'r carries the burden. To prove what? Since "fraud" is a severe breach of duty, such duty must first exist; hence, for starters: a trust agreement, the fiduciary, the beneficiary(ies), and the trust *res*.

Comm'r never even ***tried*** to carry his/its burden. Instead, comm'r submitted *ad hominem*, and the "tax court" *encouraged* the substitution. By submitting **nothing** but *ad hominem*, comm'r confessed never having had a case from the outset! Comm'r never proved his/its standing. Thus, Ramer agrees that there was no genuine issue of material fact. Comm'r never offered any evidence whatsoever on *any* point. To find for comm'r, the "tax court" egregiously and unlawfully created evidence (ruled against the great weight) *and* shifted the evidentiary burden to Ramer throughout. Since comm'r had plenty of *ad hominem*, but no pleading, motion, or evidence, rendering

summary judgment procedurally impossible to reach, and since Ramer asserted dual capacities ***and*** demanded proof of the commercial nexus, i.e., refused to "stipulate" away his defense(s), *cf.* TCR 91, the "tax court" effectively "sanctioned" Ramer, via *§ 6651(f)*, by entering summary judgment *sua sponte*.

Judgments: summary, default, and on the pleadings

Regarding TCRs 120 and 121.

FED. R. CIV. P. 56 has no condition precedent, but TCRs 120 and 121 do. There must be "joinder." TCR 38. Thus, comm'r unilaterally controls all summary judgment activity in "tax court."

Comm'r's first summary judgment motion was improperly conjoined, "unsigned," *and* too early.

Comm'r called his/its first summary judgment motion a motion to dismiss. [5]. Comm'r's illegally conjoined motion**S** violate TCR 54, meaning [5] should be struck for that reason alone.

TCR 54 identifies the two sets of motions that *may* be conjoined. Neither "motions to dismiss," TCR 53, nor "motions for sanctions," irc § 6673, are identified. If other motion**S** *were* conjoin-able, they'd be listed, not loosely theorized in the "Explanation." Key, permitted *how?* By leave? By "secret" (*sua sponte*) motion and "secret" "order?" Where's the Notice of what *else* may be conjoined? The Docket Sheet entry for [5] names only ***one*** motion, but both are named in the "orders." This is not the first time this very issue has been raised. How many times did the "tax court" strike the whole of the conjoined motion**S** when the "offending" party was a **"taxpayer" means "fiduciary"** petitioner? Still, comm'r *submits* the improperly conjoined motion**S**;

the clerk *files* the improperly conjoined motion*S*; and someone, here an un-consented-to STJ, *rules* on them, thereby obliterating TCR 54. If TCR 54 were enforced **fairly**, comm'r's improperly conjoined motion*S* would not have been allowed filed.

Since [5] is also not "signed," it should be struck.

Should [5] survive those facial deficiencies, it should be *struck, not denied, **struck***, for being "too early." TCRs 40 and 121 govern the nature and character of a motion, and [5] facially qualifies as a summary judgment motion. It addresses matters beyond the scope of the pleadings. TCR 40(b). Also, a motion to dismiss ***is*** a summary judgment motion per irc § 7459(d). Why else is the Record (*evidence*) mentioned? *Dismissal* never reaches the merits! Key, per the "tax court's" very own stinkin' rules, it can't even be *filed*, because the pleadings were not closed for at least 30 days prior to the date of mailing. TCR 121(a). Key to "closure" of pleadings is "joinder of issue," TCR 38, which doesn't happen without an "Answer." There was no "Answer." The only lawful ruling is to *strike* [5]. *See* [7], [8], [9].

Comm'r's second summary judgment motion also was "unsigned" *and* too early.

Comm'r called his/its second summary judgment by that name. [30]. It was/is "unsigned," meaning it should be struck. [36]. Ramer's response in June wasn't file-stamped until October. [35].

Also, comm'r filed "too early," again. There was/is no "Answer;" hence, no "joinder."

This is where we get into MARVEL's intentional, and transparent, efforts at "slight of hand" with the filestamp. Even if we *presume* signature authority, comm'r's "Answer," [23], due 21 July (2008), wasn't

filed until November! This is one reason why the handling of [5] matters, why the filing date of [35], [36], [37], and [38] matters, and why the motion to correct, etc., the Record matters. Comm'r submitted no "motion" within 45 days of the Service of Ramer's ***verified*** petition. Nothing about [5] allowed it even to be *filed*. Also, [5] obviously never really existed, because there's no order granting or denying it. *See* [17] (illegal "referral"), [19] (unconsented-to STJ).

On top of that, here are the documents filed by the "tax court" as comm'r's motions:

[5] (conjoined motion***S*** to dismiss and for sanctions (which sanctions request constitutes witness-tampering, i.e., ***another*** reason to strike it));

[24] (to deem "Answer" admitted) (*but see, e.g.*, [1]!) (*see also* motion to correct, etc., the Record);

[30] (for summary judgment); and

[39] (for protective order, to avoid discovery).

What's missing? A (*file-able*) motion for extension! Bottom line, [23], if signed, at all, was about ***four months late***.

In sum, comm'r never responded. *See* TCR 36(a). The "date of service" is 20 May 2008. [1]. Comm'r filed no motion within 45 days (7 July), and no "Answer" within 60 days (21 July). Therefore, the "tax court's" very own stinkin' rules prohibit *any and all* "summary judgment" motions in this case. The only lawful ruling is to *strike* [30].

Judgment should be in Ramer's favor.

Ramer requested default judgment, [9], and judgment on the pleadings, [32], based on FED. R. CIV. P. 17. Comm'r not only never responded but also never proved up any real party in interest.

Discovery

Wholesale denial of discovery.

Comm'r's TCR 54-defiant conjoined motion for sanctions, [5], typifies comm'r's but bad faith and incessant refusal to stipulate, which compelled Ramer to pursue discovery. All of Ramer's efforts at discovery were "unfiled." *See* motion to correct, etc., the Record. The only indication of Record that discovery even existed is comm'r's motion for protection. [39]. *See* [40].

Regarding TCRs 70(a)(2) and 90(a).

In exactly the same way that comm'r controls all summary judgment activity in the "tax court," comm'r also controls all discovery activity. Discovery can't start until 30 days after "joinder." *See* TCR 38.

Regarding TCR 91.

Via TCR 91, the "tax court" asserts the authority to compel ***stipulations***. *See also* [33].

No evidence

The only evidence in this Record is Ramer's.

Not one of comm'r's five documents supplies affirmative evidence of comm'r's position: [5] (no evidence); [23] (a few judicial admissions; no other evidence); [24] (no evidence); [30] (no evidence) (*see* [35 p.9]); [39] (no evidence).

No evidence—no commercial nexus; no standing.

Comm'r tendered **no evidence** of (A) any written agreement, (B) any beneficiary, ***or*** (C) any trust *res*. Thus, comm'r clearly had no intention from the outset of even *trying* to prove any commercial nexus.

No evidence—no consent to any STJ.

Ramer objected to STJs from Day One and

throughout. [1 p.2 ¶ 7], [7 p.1], [8 p.1], [9 p.1], [10 p.1], [11 p.1], [12 p.1], [13 p.1], [14 p.1], [15 p.1], [16 p.1], [18], motion to strike order by STJ p.1, [20 p.1], [21 p.1], [22 p.1], motion to strike comm'r's "Answer" p.1, motion to strike comm'r's motion to deem p.1, response to comm'r's motion to deem p.1, First PCA p.1, motion to strike clerk's "order" of 6 Feb. p.1, motion to strike assignment of 18 Feb. p.1, verified statement p.1, [35 p.1], [36 p.1], [37 p.1], Exhibits p.1, [38 p.1], motion to compel p.1, motion to strike clerk's "order" of 22 October, p.1, [42].

No evidence—no lawful basis for striking parties or capacities.

The "tax court" has defaced practically every document Ramer filed. Why? Because Ramer asserted both capacities. The Record contains absolutely no evidence justifying defacing or unilateral striking. Moreover, the "orders" are lawless, given that there was no Notice, no opportunity to be heard, and no basis in fact or law.

No evidence—no basis for any order to amend.

TCR 34(b) compels Ramer to raise all relevant points or concede it/them. To "amend" per COLVIN's "thinking" is (A) not to "appear" at all, and (B) to waive the most solid defense known to mankind.

Comm'r has ***never*** misunderstood a **"taxpayer" means "fiduciary"** petition, which may explain why comm'r never took COLVIN's incessantly-repeated "hint." The only "party" with a problem is COLVIN, who not only lacks capacity to object under TCR 51 but also, one more time, ***recited no objection***.

No evidence—no agency authority proved.

No principal ever even remotely attempted to

appear, much less for the purpose for proving up standing, i.e., a commercial nexus. *Cf.* TCR 63(d). *See also* FED. R. CIV. P. 17(a). If no principal, then no agent. Comm'r submitted no "signed" documents; hence, comm'r never responded; hence Ramer is entitled to a default judgment. [9].

Argument

Signature authority—appellate court

Actual use.

1. Did any appellate court (deputy) clerk actually sign an order?

Ramer sees four orders produced, signed, and entered of Record, over Ramer's objections, by Gans, a non-judicial decision-maker, for the COURT, with complete support and approval of the entire court.

Source of Clerk's Signature Authority.

2. Does 28 U.S.C. § 711 violate Due Process or Separation of Powers?

The congress created an office of Clerk and assigned duties. The statute is fine.

The problem arises from reading into that statute authority that was never there. The language defines no decision-making authority whatsoever. *Cf.* § 631 *with* § 639. The duties don't include ***judicial*** decision-making of *any* kind. Key, ***non-judicial*** decision-making doesn't happen without unanimous consent of the parties. *Gonzalez.*

3. Does 28 U.S.C. § 956 violate Due Process or Separation of Powers?

The congress clarified the relationship between court and clerk(s). The statute is fine.

The problem arises from reading into that statute authority that was never there. No "judge" or "court" may delegate ***judicial*** power, to *any*one, at *any* time, by *any* mechanism, for *any* reason. ***Non-judicial*** decision-making doesn't happen without unanimous consent of the parties. *Gonzalez.*

4. Does FED. R. APP. P. 27(b) violate Due Process or Separation of Powers?

FED. R. APP. P. 27(b) purports to grant *procedural* decision-making authority to the clerks. Since there is no such authority in the office, this concept challenges Separation of Powers to the hilt. It's clear that the congress never intended clerks to make *judicial* decisions, not even procedural ones.

Without setting aside that objection, but looking at the rule-making process, it's conceivable that this Rule is legit. Starting there and working backwards, there is a possible justification: recognize the clerical staff as "alternative decision-makers." While the office doesn't permit such, it doesn't overtly prohibit such, either. The clerks are available, and there may be substantial cost savings.

Just the same, no procedural rule creates an office or subject matter jurisdiction. Thus, if such "alternative decision-makers" have signature authority, at all, it's by one and only one mechanism: unanimous consent of the parties. *Gonzalez.*

Ramer does not presume this Rule valid, in any way, shape, manner, or form. Procedural rules do not

create or expand subject matter jurisdiction. But, even if we presume the Rule valid, it's an Evel Knievel Grand Canyon jump to get to *from* the existence of the Rule *to* clerical decision-making authority *over* at least one party's objections.

5. Does 8TH CIR. R. 27B violate Due Process or Separation of Powers?

See Question 4. The only way any appellate court's rule is valid, at all, is if the uniform federal rule is valid, and Ramer greatly questions Rule 27(b). The appellate court's Rule 27B exacerbates the same problem magnificently.

If Rule 27(b) passes muster, it follows that Rule 27B would also. Still, we're looking at Evel Knievel's Grand Canyon jump as the perfect analogy as to *when* clerical decision-making over any party's objection is in any way lawful. *Gonzalez.*

Compelled consent.

6. Does an appellate (deputy) clerk have decision-making authority, at all?

Just compare the oaths of office.

Cf. § 453 *with* § 951. No appellate court clerk takes even a feigned oath to abide by the laws of the United States. Why not? Because the congress never intended for § 711 and § 956 clerks to be decision-makers! *But see* Rule 27(b).

Compare the duties contemplated.

If the congress intended for clerks to be decision-makers, then surely they would spell out the scope of such authority. *Cf.* § 631 *and* § 636 *with* § 711 *and*

§ 956. Clearly, magistrates *are* designed to be alternative decision-makers. Just as clearly, appellate court clerks *are not*.

By consent only.

The (deputy) clerks are not § 451 "judges." Thus, presuming a reason exists for the Rules that even *contemplate* clerical decision-making, if clerks have signature authority to enter rulings, at all, *see* Rule 27(b), it would be "by consent only." *Cf. Gonzalez*.

7. If so, what besides unanimous consent provides that authority?

Nothing. *Gonzalez* ("If the parties consent").

8. May the appellate court compel consent to non-judicial decision-making?

No! *Gonzalez* ("If the parties consent"). *See also* Questions 12 and 39.

Signature authority—"tax court"

Non-judicial decision-makers.

9. Did any STJ ever have signature authority?

Ramer never consented.

No. *Cf. Gonzalez* ("If the parties consent"). The STJ is to the "tax court" what the "magistrate" is to the federal trial court, namely a non-judicial decision-maker. No "referral" is lawful unless unanimous consent of the parties appears of Record.

Therefore, [17] and [26] are illegal; [19], [27], [28], and [29] are unsigned. All of these should be struck.

10. Does TCR 182 violate Due Process?

Even after *Ballard*, even after *Gonzalez*, TCR 182, even as amended, ***still*** (A) puts the decision of STJ participation exclusively in the hands of the "chief judge" not the parties, *see* TCR 182(d), and (B) has the STJ report to the "chief judge" not to the Record, per TCR 182(c).

11. Does TCR 183 violate Due Process?

See Question 10.

Despite *Gonzalez*, TCR 183(a) still compels consent to STJ participation.

Despite *Ballard*, TCR 183(b) still has the STJ report to the "chief judge" not to the Record.

Despite *Ballard*, the "tax court's" practice is still to make "secret" "referral" "orders." Since the ***only*** "tax court" officer that any litigant can expect to participate is the "chief judge," even the "referral" to a "judge" must be made of Record. The **"taxpayer" means "fiduciary"** cases have chipped a few small pieces off this iceberg, in that a few of the "secret" "order" cult practices aren't *100%* that way any more. But, TCR 183(b), (c), and (d) still allow "referral" "orders" to be "secret," as in, never filed of Record.

12. Does irc § 7443A violate Due Process?

See Questions 10 and 11.

<u>The problem is in § 7443A(c).</u>

The conceptual origin of the problems with TCRs 182(d) and 183(a) is § 7443A(c), which purports to put in the hands of the "chief judge" the authority to allow the STJ to make the decision of the court.

That's ***not*** the "chief judge's" call to make. If

there's any STJ participation, at all, then the scope of that participation is governed by the consent of the parties. Period. *Gonzalez*. Since it's within the legislative scope of the office of STJ for the STJ to enter the decision of the court, the "chief judge's" interference on that issue sounds more in tortious interference, compelled consent, and criminal Record-tampering than Separation of Powers.

"Judges" v. "special trial judges"—reprise.

Cf. § 451 ("during good behavior") *with* irc § 7443(e) (15-year term). *Cf.* § 451 ("court") *and* irc § 7443(e) ("judge") *with* § 631(e) ("magistrate;" fixed term; hired) *and* § 7443A (STJ; unspecified term; hired (tax court)).

Compelled consent doesn't produce authority.

Consent cannot be compelled. *Rudzewicz* (jurisdiction doesn't flow from fraud, undue influence, or overwhelming bargaining power); FED. R. CIV. P. 8(c); *Ballard* (local rules don't justify (criminal) Due Process violations); § 636(a), (c) ("by consent only"); *Gonzalez* ("If the parties consent") (construing § 636(**b**)); *Boddie* (denial of access); *Harbury* (study of denial of access claims).

13. Did any clerk ever have signature authority?

Ramer never consented.

Ramer's objection to non-judicial decision-making started with his petition. [1]. While his objection named only STJs at first, and while it formally included clerks with motion to strike comm'r's "answer," "unfiled" by [27] (which "order" is unsigned and properly struck), the intent has been the same from the outset.

All the clerical "unfiling" "orders" were originally "secret" "orders." *Cf. Ballard.* They are no longer "secret," via the motion to correct, etc., the Record, but they are still "unsigned." With the Record corrected, etc., the clerical "orders" should all be struck and the Record fully restored.

The clerk also sent out "orders" setting deadlines and such. [25], [31], [32]. The Docket Sheet calls them "Notices." But, they are far more than that! Throughout the TCRs, outrageously broad discretion is overtly reserved in the judges. Therefore, in the "tax court," even to set a response period for ***any*** motion is to exercise that outrageously broad *judicial* discretion. The clerk has no such authority unless and until all parties consent. *Cf. Gonzalez* ("If the parties consent ...."). Ramer never consented.

Bench and Bar.

14. May the "tax court" strike, *sua sponte*, a party/capacity?

Capacity and *res judicata.*

Since differences in capacity are fully recognized by *res judicata, see, e.g., Sturgel,* 553 U.S. at 897-98, *Richards, Sea-Land Svcs., Inc.*, it follows that Ramer has **100% control** over the capacity(ies) he asserts in the suit he's compelled procedurally to initiate.

COLVIN isn't a party!

The objection to parties, etc., is for a ***party*** to raise, not a "judge." TCR 51. *But see* [4]. *Cf.* FED. R. CIV. P. 9(a).

Without Notice, opportunity to be heard, *or* factual or legal basis.

See [4]; all "unfiling" "orders' in Ramer's motion to

correct, etc., the Record; all "unfiling" "orders" of Record; all defaced documents. *Hamdi*; *Milliken*; *Peralta*; *Lloyd*, 5 U.S. at 366 ("A citation not served is as no citation."); *Internat'l Shoe*; *Sniadach*; *Boddie*; *Fuentes v. Shevin*; *N. Ga. Finishing*; and *Jones*. *See also Harbury* (denial of access).

COLVIN recites the pleading standards, but nowhere identifies any specific problem justifying a TCR 51 motion. There can be only one explanation: nothing needed amending!

15. Is COLVIN a "party" for purposes of TCR 51?

The rule is self-limited to "parties only."

COLVIN is the only one talking about amendment. One more time, ***comm'r*** didn't raise that issue. The objection to parties, etc., is for a ***party*** to raise, not a "judge." TCR 51. *But see* [4]. *Cf.* FED. R. CIV. P. 9(a).

The reality is that COLVIN ***is*** a party for purposes of TCR 51!

Comm'r hasn't "heard" COLVIN's shouted stage whisper from Day One. Perhaps comm'r is too distracted by the thunderous cacophony of "frivolous, groundless, and sanctions." For whatever reason, COLVIN has effectively taken over the "defense" of every single **"taxpayer" means "fiduciary"** case he's handled, picking up where GERBER left off. Not blinding ourselves to what all others can see, *Rudzewicz*, 471 U.S. at 486 (citing *Rumely*, 345 U.S. at 44), COLVIN ***is*** a party (an unrecognized, illegal intervenor) for these cases, which is only ***part*** of why the original petition, [1], demands his self-recusal per § 455(a). His mere participation has violated

Due Process from the very beginning.

Of course, as a "judge," COLVIN has no signature authority to file a TCR 51 motion, because he's not a ***party***. And, as a ***party***, COLVIN has no signature authority per § 455(a). Thus, COLVIN's TCR 51 "motion" should be struck.

16. Is COLVIN's TCR 51 "order" to replead/ amend vague?

Amend what?

COLVIN makes no discernable objection, at all. *See also* TCRs 41, 50. COLVIN's TCR 51 motion also defies his own stinkin' rules! He points out not one defect, and he relies on his vague "motion" rather than stipulations and discovery to narrow down the points. *See* TCRs 70, 90. Thus, it's very clear COLVIN intends to use his position under color to tamper with Ramer long enough that Ramer stops testifying that **"taxpayer" means "fiduciary"** and stops compelling comm'r to prove up his/its threshold burden. That plan is sure working, huh?!

Twombly, Iqbal.

COLVIN's TCR 51 motion defies federal policy about Notice pleading. *Conley* (notice pleading standard). Moreover, in light of the recent studies of minimum pleading requirements, namely *Twombly* and *Iqbal*, given that comm'r has filed no pleading at all, it follows that COLVIN's TCR 51 participation as a party is all the more pathetically pointless.

17. Did KORB/DARNOLD, etc., ever prove up having signature authority?

The relevant agency theories.

ACTUAL AUTHORITY AND APPARENT AUTHORITY.

Fundamentally, there can't be an agent without a principal. Ramer demanded proof of KORB's, DARNOLD's, and etc.'s, agency (signature) authority. [7]. No principal ever appeared.

Agency authority cannot be presumed. He who claims agency must prove it. *Newberry*; *Taylor*.

Where two parties manifest that one is willing for another to act on his behalf, under his control, and the other consents, an agency relation is created. *Reed*. The two essential elements of an agency relationship are (1) that an agent have the authority to act for the principal, and (2) that the agent act on the principal's behalf and be subject to the principal's control. *Id*. *See also Foundation Telecomm.* (apparent authority).

Where agency is presumed and not proved, this matter is considerably more than a mere sufficiency of evidence matter. Any implied finding of agency, which is an issue of fact, would be made without evidence and without any burden on KORB/DARNOLD, etc. Thus, while this issue may *also* give rise to a *sufficiency* point, first it is a *shifting of the burden* point.

KORB/DARNOLD, ETC., NEVER PROVED ACTUAL AUTHORITY.

Actual authority arises where the principal authorizes the agent(s). *See* RESTATEMENT (THIRD) OF AGENCY § 2.01. Ramer expects that both comm'r and any "secretary" are agents, not a/the principal. But, what-/who-ever may be the principal, Ramer

demanded strict, documentary proof, and comm'r went completely silent.

KORB/DARNOLD, ETC., NEVER PROVED APPARENT AUTHORITY.

Apparent authority arises where a third party, e.g., Ramer, believes that the agent(s), here KORB/DARNOLD, etc., have the authority to affect the principals legal relations with Ramer, where that belief derives from the principal's manifestations. *See* RESTATEMENT (THIRD) OF AGENCY § 2.03. Since Ramer has no idea who/what is/are the purported principal(s), Ramer has no such belief and will never have such belief until strict, documentary proof exists that satisfies comm'r's threshold burden. Comm'r went completely silent.

None of KORB/DARNOLD, etc., ever proved TCR 23(a)(3) signature authority for this matter.

Bottom line, there being no evidence of any principal, there is also no evidence of any agent. Since none of KORB/DARNOLD, etc., has any signature authority for this matter, comm'r has no motions, pleadings, etc., of Record. Each should be struck for lack of TCR 23(a)(3) signature.

Contents of the Record

18. May the "tax court" deface documents?

Ballard (local rules don't justify (criminal) Due Process violations).

19. Is the "unfiling" "order" of 21 May 2008 lawful?

Clerical "order," not filed of Record, "unfiling"

Ramer's (1) *Pollock I* Notice and (2) Conference Call Standards. *Gonzalez.*

20. Is the "unfiling" "order" of 24 October 2008 lawful?

Clerical "order," not filed of Record, "unfiling" (3) Ramer's motion to strike order by special trial judge. *Gonzalez.*

21. Is the "unfiling" "order" of 2 March 2009 lawful?

STJ's "order," [27], "unfiling" Ramer's (4) motion to strike comm'r's "answer," (5) motion to strike comm'r's motion to deem answer "admitted to," (6) response to comm'r's motion to deem answer "admitted to," and (7) first probable cause affidavit. *Gonzalez.*

22. Is the "unfiling" "order" of 19 March 2009 lawful?

STJ's "order," [28], "unfiling" Ramer's (8) verified motion to strike clerk's "order" of 6 February 2009, and (9) verified motion to strike COLVIN's "assignment" "order" of 18 February 2009. *Gonzalez.*

23. Is the "unfiling" "order" of 26 March 2009 lawful?

STJ's "order," [29], "unfiling" (10) Ramer's verified statement. *Gonzalez.*

24. Is the "unfiling" "order" of 26 October 2009 lawful?

MARVEL's "order," [34], "unfiling" (11) Ramer's

Exhibits, calling Ramer's position "frivolous and groundless," complaining about the "caption" (i.e., the "case style"), and engaging in witness-tampering, etc., via threatening sanctions. *See* Question 14.

25. Is the "unfiling" "order" of 4 December 2009 lawful?

Clerical "order," not filed of Record, "unfiling" (12) Ramer's verified brief responsive to MARVEL's "order" regarding the caption. *Gonzalez.*

26. Is the "unfiling" "order" of 29 December 2009 lawful?

Clerical "order," not filed of Record, "unfiling" (13) Ramer's verified motion to compel. *Gonzalez.*

27. Is the "unfiling" "order" of 7 January 2010 lawful?

Clerical "order," not filed of Record, "unfiling" (14) Ramer's verified motion to strike clerk's "order" of 22 October 2009. *Gonzalez.*

Party alignment

28. In a "fraud" penalty case, what is the *de facto* party alignment, even in the "tax court?"

Party alignment is determined by federal law. *Chicago, Rock Island*, 346 U.S. at 580. *Cf. Gaar.* Comm'r, the claimant, is the *de facto* **plaintiff**. *Cf.* [19], [42].

Evidentiary burden

29. In a "fraud" penalty case, who carries the burden, even in "tax court?"

Comm'r.

Even the "tax court" sees that here. *Cf.* [42]. *See* irc § 7454.

Obviously, Ramer never conceded it. TCR 34(b)(4) (petitioner burdened to raise ***all*** issues, including those for which ***comm'r*** has burden). [1].

"The burden of proof is on the party who asserts the existence of a trust." BOGERT § 50 at 102. BOGERT § 871 at 156 and nn.2, 3 (where beneficiary fails to prove damages, there is no recovery). "If the beneficiary makes a prima facie case, the burden of contradicting it or showing a defense will [*then*] shift to the trustee." *Id.* at 156-57; 2A SCOTT ON TRUSTS § 172, at 452-53 (burden shifts ***after*** beneficiary establishes threshold burden); BOGERT § 861 at 2-3 (same). Thus, in a non-rigged forum, the *threshold* burden is on the alleged beneficiary.

30. In a "fraud" penalty case, what must comm'r prove to establish his/its threshold burden?

No "taxpayer?"—no duty, much less "fraud."

To prove up "taxpayer," comm'r must prove a trust, namely: (A) a (lawful) trust agreement, (B) a/the beneficiary(ies), **and** (C) a lawful trust *res*. *See Mitchell II*, 463 U.S. at 225 (citing RESTATEMENT (2D) TRUSTS) § 2 cmt. h) (elements of a trust); TCR 34(b)(4) (petitioner burdened to raise ***all*** issues, including those for which ***comm'r*** has burden); BOGERT § 50 at 102 ("The burden of proof is on the

party who asserts the existence of a trust."); BOGERT § 871 at 156 and nn.2, 3 (beneficiary must plead and prove the existence of the fiduciary duty); SCOTT, ABRIDGMENT, TRUSTS, §§ 66 (necessity of beneficiary and trust property), 74 (necessity of trust property), 112 (necessity of beneficiary); ARK. CODE ANN. §§ 28-73-401, -402, -404, -407 (elements); IRC § 7454(a).

No "taxpayer?"—no standing.
Defenders of Wildlife ("injury in fact").

31. Where's comm'r's evidence establishing his/its threshold burden to any standard, much less for summary judgment?

No evidence (favoring comm'r).

There is no evidence of any element of a trust. *Scott* (citing *Diebold*, 369 U.S. at 655; *Anderson*, 477 U.S. at 255) (summary judgment presumptions are *against* movant).

The direct evidence is Ramer's, which ***disproves*** comm'r's threshold burden. *O'Connor* (verified papers not denied or contradicted by countervailing affidavits or evidence are accepted as true.).

Comm'r amply proved disclaimer!

If there ever was a trust agreement, comm'r has disclaimed it, in spades! BOGERT § 50 at 108 (trust rendered unlikely where alleged beneficiary mistreats alleged fiduciary).

There is ample evidence of disclaimer. *See* BOGERT §§ 170-72 (disclaimer and its effect), in particular BOGERT § 170, at 205 (Proof of Acceptance or Disclaimer) (acceptance is presumed; disclaimer/renunciation must be supported by clear evidence). Criminal Record-tampering, retaliation, witness-

tampering, denial of access, RICO-level extortion, mail fraud, and etc., all under color, is more than sufficiently clear evidence. BOGERT § 170, at 207 (conduct inconsistent with a trust may trigger disclaimer). Since a beneficiary is such from the trust's creation date, disclaimer operates *nunc pro tunc* to that same date. BOGERT § 172, at 227-28.

Disclaimer doesn't justify the "judgment," either.

32. Did the "tax court" unlawfully shift the burden of proof?

Trust law is state law.

When the "tax court" misinterprets state law, the appellate court may apply the law properly. *Cf. Salve Regina College*, 499 U.S. at 231; *Royal Ins.*

Judgment supported by no evidence.

See Questions 29-31.

Compelled consent.

A coerced trust is not evidence. BOGERT §§ 42 at 434, 44 at 452 and n.16.

Irrebuttable presumptions violate Due Process.

Elkins; *Salfi* (in particular part III, which distinguishes *Salfi*); *LaFleur*; *Vlandis*; *Stanley*.

Judgments: summary, default, and on the pleadings

33. Is comm'r's second summary judgment motion any more timely than its first?

Comm'r's first summary judgment motion was improperly conjoined, "unsigned," *and* too early.

The motion*S* were improperly conjoined. TCR 54.

There's no evidence of agency. TCR 23. And, there was no "Answer." TCRs 38, 40, 121; irc § 7459(d). The only lawful ruling is to *strike* [5]. *See* [7], [8], [9].

Comm'r's second summary judgment motion also was "unsigned" *and* too early.

Because [5] is properly struck, it matters all the more that [23], even if "signed," wasn't mailed/filed until November. It was due in July. There is no request for, or order granting, any extension. *See* [17] (illegal "referral"), [19] (unconsented-to STJ).

Comm'r never responded. *See* TCR 36(a). Therefore, the "tax court's" very own stinkin' rules prohibit *any and all* "summary judgment" motions in this case. The only lawful ruling is to *strike* [30].

34. Do TCRs 120 and 121 violate Due Process?

Comm'r controls petitioner's access.

TCRs 120 and 121 directly conflict with FED. R. CIV. P. 56. TCRs 120 and 121 leave fully in the hands of comm'r whether the clerk even has authority to file dispositive motions. TCR 121 reserves so much discretion in the "tax court" as to amount to effective denial of access. TCR 120 allows the "tax court" to refuse to rule in petitioner's favor on the pleadings, thereby allowing the "tax court" to drag a party through the entirety of trial for no legitimate reason at all.

Where comm'r doesn't "plead," thus, where the pleadings are not closed, a petitioner is procedurally denied access to the court to file dispositive motions. At the same time, as seen here, *twice*, comm'r ***may*** file dispositive motions in violation of the TCRs, as has been the practice to date, generally.

35. Is Ramer entitled to a default judgment?

Comm'r filed no motion by 7 July.

Comm'r never proved agency. Thus, nothing comm'r submitted is "signed."

If [5] is "signed," the "tax court" want it both ways. Comm'r's motion***S*** violate TCR 54, so the *whole* document is struck, not just part of it.

Comm'r's motion***S*** also trigger TCRs 40 and 121, and there was no "joinder," meaning [5] can't even be allowed filed for *that* reason. In sum, as a matter of law, comm'r filed no motion by 7 July.

Comm'r filed no "Answer" by 21 July.

Comm'r's submitted no "Answer" until November. [23]. Comm'r requested no extension; no "order" grants such. *See* [17], [19]. That "Answer" is also not "signed." In sum, as a matter of law, comm'r filed no pleading, at all, much less on or before 21 July. Thus, *see also* irc § 7454(a).

Best evidence—note what's missing.

When the "tax court" consider the pleadings closed, i.e., find "joinder of issue," they file their "Standing Order." *Cf.* [33].

As a matter of law, the "tax court" can't see "joinder" here, regardless. But, even if "joinder" occurred, the "tax court" saw no "joinder," i.e., no "Answer," on or before 21 July. The earliest possible date would be in November, which date falsely presumes that both [17] and [19] are lawful.

Ramer is entitled to his default judgment.

The motion, [9], should have been granted.

36. Is Ramer entitled to judgment on the pleadings?

Goose/Gander.

If comm'r may request pre-trial disposition prior to "joinder," [5], then so may Ramer. [37]. [4]

Comm'r never presented any real party in interest. FED. R. CIV. P. 17. Thus, even where all facts pled by comm'r are accepted as true (there are no such facts, for there is no "Answer"), and even where all reasonable inferences from the pleadings are granted in favor of comm'r, per *Any & All Radio*, 207 F.3d at 462, it follows that judgment on the pleadings in Ramer's favor is appropriate. There is no material issue of fact that remains to be resolved, and Ramer is entitled to judgment as a matter of law. *Faibisch*, 304 F.3d at 803.

The following are beyond dispute:

- **"Taxpayer" means "fiduciary;"**
- Ramer has denied, under oath, that he's a fiduciary; *cf.* TCR 34(b);
- Ramer has demanded strict proof;
- opting for a criminal level of *ad hominem* as a substitute for evidence, comm'r never proved up any trust agreement, period, much less one naming (A) Ramer as a/the fiduciary, (B) any beneficiary(ies), and (C) the trust *res*.

Ramer is entitled to judgment.

If it's at all lawful for the "tax court" even to entertain summary disposition prior to "joinder of issue," then it was error to deny judgment on the pleadings, or, alternatively, summary judgment, in favor of Ramer. [37].

---

[4] Remember MARVEL's "slight of hand," here.

Discovery

37. May Ramer legally be denied his discovery?

Comm'r can't (a) refuse to stipulate, then (b) avoid discovery, *and then* (c) prevail.

Comm'r, who carries the burden, (A) wholesale refused, in habitual bad faith, to stipulate, *see* Ramer's "unfiled" motion to compel, then (B) sought protection, [39], which was *granted*, [40], ***and then*** (C) was awarded ***summary*** *judgment*.

Claims that can't withstand discovery don't prevail. *Cf. Hammond Packing Co.*, 212 U.S. at 350-51. *See also Ins. Corp.*; *Roadway Express* (citing *Nat'l Hockey League* (citing *Societe Internationale*, 357 U.S. at 212-13)).

38. Do TCRs 70(a)(2) and 90(a) violate Due Process?

Systemic discovery-avoidance policy.

The *federal rules*, which include Scheduling Orders, *favor* discovery. The *TCRs* disdain discovery and *favor* "compelled stipulations" per TCR 91.

TCRs 70(a)(2) and 90(a) support the flawed TCR 91 "compelled stipulation" policy. They depend on "joinder" and so limit the discovery start- and stop-times as to amount to denial of discovery, thus access, generally. *See* irc § 7458; *Harbury*. *Accord Miller*, 654 F.2d at 521 (Due Process requires (1) a neutral forum, and (2) presentation of the merits).

39. Does TCR 91 violate public policy?

TCR 91 purports to justify compelled consent.

It is one thing to establish a condition precedent for discovery of requiring an effort at stipulations.

Prohibiting discovery until the parties have at least tried, in good faith, to agree to some things, *see* TCR 51, 70(a)(1) , 70(a)(2), 90, 91(a) and 100, is a policy that should be grafted into the federal rules.

But, TCR 91 goes way beyond setting a condition precedent. TCR 91(a) requires ***stipulations***. TCR 91(f) purports to justify compelled *stipulations,* i.e., compelled *agreements*, i.e., compelled *admissions*, which is "evidence" created via judicial compulsion. *See* TCR 91(c); TCR 143 (FED. R. EVID. apply); FED. R. EVID. 801(d)(2) (admissions).

Coercion vitiates the very "evidence" it purports to create. *Rudzewicz*, 471 U.S. at 486 (jurisdiction doesn't flow from fraud, undue influence, or overwhelming bargaining power); *Ohralik* (undue influence in legal services environment, in particular); *Bates* (along the same line; focus on legal services ads); FED. R. CIV. P. 8(c); *Ballard* (local rules don't justify (criminal) Due Process violations); 28 U.S.C. § 636(a), (c) (magistrate participation is "by consent only"); *Gonzalez* ("If the parties consent ....") (construing § 636(**b**)); *Boddie* (denial of access); *Harbury* (same).

A coerced will is not evidence. *See* 1 PAGE, THE LAW OF WILLS, §§ 5.7, 15.11 (rev. 2003). A coerced trust is not evidence. BOGERT §§ 42 at 434, 44 at 452 and n.16; *Pollock I*, 157 U.S. at 553-54 (1st ¶ of opinion) (non-agreement by even one beneficiary prevents amendment); *Planters' Bank* ("government" as proprietor); *Griswold* (STATE ***cannot*** compel commerce). A coerced commercial transaction is not evidence. U.C.C. § 1-103. A coerced confession is not evidence. *Escobedo*; *Miranda*.

Trial is not about *agreement*. *Trial* is about *proof*. Where a "case" is "agreed to," at judicially imposed

bayonet point, trial is a farce, a mockery, a sick joke. Thus, it's difficult to find a rule more defiant of Due Process and more repugnant to public policy than TCR 91.

Remedies and Relief Requested

Given the foregoing, Ramer requests relief as follows:

1. Grant this petition, issue the writ of certiorari, and take jurisdiction;

2. Confirm that any non-judicial decision-making happens, if at all, only by unanimous consent of the parties, both at trial and on appeal;

3. Declare the *de facto* party alignment;

4. With those rulings, "Reversed" will suffice; [5]

5. Given that these issues warrant further discussion, or if a new trial is the only option, then, in addition to "Reversed" or "Vacated,"

A. if remanded, include instructions that neither COLVIN nor MARVEL shall participate;

B. confirm what is and isn't in the Record;

C. explain how FED. R. APP. P. 27(b) and 8TH CIR. R. 27B pass muster;

D. strike all clerk-"signed" "orders" on appeal;

E. strike all clerk-"signed" "orders" at trial;

---

[5] "Upon *de novo* review, it's clear that Ramer, the *de facto* defendant, never consented to decision-making by any clerk, trial or appellate, or by any special trial judge. *Gonzalez v. United States*, 553 U.S. 242 (2008). Reversed. *See* Tax Court Rules 23(a)(3), 36(a), 38, 40, 54, and 121, FED. R. CIV. P. 17, and 26 U.S.C. § 7454."

F. strike all STJ-"signed" "orders;"

G. strike TCR 182;

H. strike TCR 183;

I. strike irc § 7443A(c);

J. strike COLVIN's "order(s)" striking parties/ capacities;

K. strike COLVIN's TCR 51 "order" to replead/ amend;

L. strike all comm'r's submissions that are "unsigned;"

M. confirm that defacing violates Due Process;

N. confirm that the "unfiling" "orders" here flagrantly violate Due Process;

O. set up a board of inquiry for all the defacing and "unfiling" so habitually committed by the "tax court" personnel;

P. confirm that comm'r carries the threshold burden in "fraud" cases, starting with the existence of a duty;

Q. confirm that the "tax court" unlawfully shifted the burden in this case;

R. confirm that comm'r's first motion for summary judgment was unsigned, improperly conjoined, and too early;

S. confirm that comm'r's second motion for summary judgment was unsigned and too early;

T. strike TCRs 120 and 121 for violation of Due Process;

U. declare that Ramer was unlawfully denied his discovery;

V. strike TCRs 70(a)(2) and 90(a) for violation of Due Process; and

W. strike TCR 91 as ***hideously defiant*** of Due Process and public policy;

In addition, Ramer requests

6. The opportunity to brief any additional issues the Court may identify;
7. The non-argument calendar;
8. Costs; and
9. Any and all relief at law, in equity, or sui generis to which he may show himself justly entitled.

Respectfully submitted,

/s/ Lester R. Ramer
Lester R. Ramer
11717 Stage Coach Road
Gravette, AR 72736

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Appendix A

Rule 14.1(i)(i)—Appellate ruling

2010 Sep 30—Opinion

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 10-1584

Lester R. Ramer, Appellant,	*	
	*	Appeal from United
v.	*	States Tax Court
	*	
Commissioner of Internal Revenue, Appellee.	*	[UNPUBLISHED]

Submitted: September 7, 2010
Filed: September 30, 2010

Before BYE, BOWMAN, and COLLOTON, Circuit Judges.

PER CURIAM.

Lester Ramer appeals the tax court's [1] adverse grant of summary judgment in this tax-deficiency

[1] The Honorable L. Paige Marvel, United States Tax Court Judge.

action. Ramer has also filed a motion challenging the tax court's return of certain documents nor noncompliance with the court's rules, and a motion to "strike" certain federal rules and statutes.

Upon careful de novo review of the tax court's summary judgment decision, see Nestle Purina Petcare Co. v. Comm'r, 594 F.3d 968, 970 (8th Cir. 2010) (standard for review tax court's summary judgment decision), petition for cert. filed, 78 [⊥ 2] U.S.L.W. 3653 (U.S. Apr. 20, 2010) (No. 09-1339), we conclude that the grant of summary judgment was proper for the reasons stated by the tax court, and we find no merit to any of Ramer's arguments on appeal.

Accordingly, we affirm the tax court's decision. See 8th Cir. R. 47B. We also deny the pending motions.

2010 Sep 30—Unconsented-to Clerk's "Judgment"

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 10-1584

Lester R. Ramer,

Appellant,

v.

Commissioner of Internal Revenue,

Appellee.

Appeal from Tax Court, Internal Revenue Service (11623-08)

JUDGMENT

This appeal from the United States District Court was submitted on the record of the district court and briefs of the parties.

After consideration, it is hereby ordered and adjudged that the judgment of the district court in this cause is affirmed in accordance with the opinion of this Court.

September 30, 2010

Order Entered in Accordance with Opinion
Clerk, U.S. Court of Appeals, Eighth Circuit

/s/ Michael E. Gans

Rule 14.1(i)(ii)—Additional Orders

Summary Judgment—"Tax Court"

2009 Dec 16—Order and Decision [41]

UNITED STATES TAX COURT
WASHINGTON, DC 20217

LESTER R. RAMER, Petitioner	)	
v.	)	Docket No. 11623-08.
COMMISSIONER OF INTERNAL REVENUE, Respondent	)	

ORDER AND DECISION

On May 29, 2009, respondent's motion for summary judgment was filed. On June 2, 2009, this Court served upon petitioner a Notice of Filing, which gave petitioner until July 2, 2009, to submit "a notice of objection which sets forth the basis for the objection". On or about June 26, 2009, petitioner executed a document entitled "Ramer's Response to Comm'r's Motion for Summary Judgment" (petitioner's response), which bore an incorrect caption, and served it on respondent. Petitioner also sent it and several other documents to this Court. The Court received the documents on June 30, 2009. However, the documents were not filed at that time because they did not comply with the Tax Court Rules of Practice and Procedure.

In a "Notice Setting Case For Trial", which was served on petitioner on October 22, 2009, this case was set for trial at the Little Rock, AR Trial Session

beginning on March 22, 2010, (Marvel, J. presiding). The unfiled documents were forwarded to the undersigned for appropriate action. By order dated October 26, 2009, the undersigned directed that most of the documents, including petitioner's response, be filed after the Court corrected the captions. The October 26, 2009, order also warned petitioner about the consequences of continuing to submit documents containing frivolous and groundless arguments and/or improper captions.

Respondent's motion for summary judgment requests summary adjudication in his favor under Rule 121, Tax Court Rules of Practice and Procedure. Rule 121 authorizes this Court to grant such a motion and render a decision "if the pleadings, answers to interrogatories, depositions, admissions, and any other acceptable materials, together with the affidavits, if any, show [⊥ 2] that there is no genuine issue as to any material fact and that a decision may be rendered as a matter of law." Rule 121(d) also warns that "an adverse party may not rest upon the mere allegations or denials of such party's pleading, but such party's response, by affidavits or as otherwise provided in this Rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, then a decision, if appropriate, may be entered against such party."

Respondent's motion was made and supported as required by Rule 121. Petitioner was given an opportunity to respond to the motion and did submit a response. However, the response did not comply with Rule 121 in that the response did not set forth specific relevant facts showing that there is a

genuine issue for trial, and petitioner did not submit affidavits under oath directed to the factual issues or any other materials that would support a conclusion that a trial is necessary. Petitioner's response is riddled with derogatory and inflammatory remarks about Court personnel, respondent, and the tax system, and demonstrates a complete disregard for the actual issues that this case presents. Petitioner's response makes it clear that he has no intention of addressing the issues on their merits either in the context of respondent's motion or at trial.

We turn then to respondent's motion, and we examine whether it contains sufficient information to support a conclusion that summary adjudication is appropriate. The relevant facts are as follows.

By notice of deficiency dated February 13, 2008, respondent determined an income tax deficiency of $328,190 and additions to tax under sections 6651(f), I.R.C., 6651(a)(2), I.R.C., and 6654, I.R.C., for the taxable year 2002. In the notice of deficiency, respondent determined the following: (1) Petitioner had taxable business income of $823,895 from Petra Stone for 2002, which respondent calculated by using the bank deposits method of reconstructing income; (2) petitioner was liable for self-employment tax of $32,592.74 and was entitled to a deduction of $16,297, representing one-half of the self-employment tax for 2002; (3) petitioner is entitled to a standard deduction of $3,925 for 2002 (assuming a filing status as a married taxpayer filing a separate return); (4) petitioner is liable for the section 6651(f), I.R.C., addition to tax because petitioner did not file a Federal income tax return for 2002 and his failure to file was fraudulent; (5) petitioner is liable for the

section 6651(a)(2), I.R.C., addition to tax because he failed to pay the tax he owed for 2002; and (6) petitioner is liable for the section 6654, I.R.C., addition to tax because he did not make required estimated tax payments for 2002. [⊥ 3]

In response to the notice of deficiency, petitioner filed a lengthy petition that was rife with allegations that he did not have income or owe any income or self-employment tax, that he was not required to file a tax return because he had no income, and that he did not have a fiduciary duty to the United States of America. Respondent answered the petition, and in the answer he made affirmative allegations in support of his position that petitioner had substantial income for 2002 and that petitioner fraudulently failed to file a tax return for 2002.

On February 2, 2009, respondent filed a motion pursuant to Rule 37, Tax Court Rules of Practice and Procedure, that the affirmative allegations in his answer be deemed admitted. In a Notice of Filing of Motion for Order Under Rule 37, dated February 6, 2009, and served on petitioner February 9, 2009, the Court required petitioner to file a reply, as required by Rule 37(a) and (b), on or before March 2, 2009.

On or before February 13, 2009, petitioner mailed to the Court several documents that were not properly captioned. On March 2, 2009, the Court ordered that the documents be returned to petitioner and extended the deadline for petitioner to file his reply to March 20, 2009. Petitioner failed to submit a proper reply as required by the Court's order and Rule 37.

On March 26, 2009, the Court ordered that the

affirmative allegations in respondent's answer be deemed admitted as required by Rule 37(c). The deemed admissions establish, among other facts, that (1) petitioner owned and operated a business conducted under the name of Petra Stone during 2002; (2) petitioner maintained bank accounts during 2002 into which he deposited $823,895, representing unexplained deposits that were not excludable income or nontaxable income; (3) petitioner established a sham trust to conceal his business income; (4) neither the trust nor petitioner filed a tax return for 2002; (5) petitioner has not filed an individual income tax return since 1996; (6) petitioner was extremely uncooperative during the 2002 audit; (7) petitioner actively espouses frivolous anti-tax positions; (8) petitioner failed to maintain or submit for examination by respondent complete and accurate books and records of his income-producing activities for 2002; (9) respondent determined petitioner's 2002 income using the bank deposits method of reconstructing income; (10) petitioner's failure to file a return and related actions were fraudulent with the intent to evade his 2002 Federal income tax liability; (11) petitioner did not pay any 2002 estimated tax payments or any part of his 2002 income tax liability; [sic] (12) petitioner has asserted frivolous and groundless positions in his petition and in several motions and documents submitted in this case. In addition, certified transcripts of petitioner's 2001 and 2002 tax accounts and a [⊥ 4] section 6020(b), I.R.C., certification that are attached to respondent's motion as exhibits demonstrate that petitioner was required to make but did not make estimated tax payments for 2002, that petitioner did not pay any part of his 2002 income tax liability, and

that respondent prepared a substitute for return for 2002 under section 6020(b), I.R.C., as a predicate for asserting the section 6651(a)(2), I.R.C., addition to tax. See Wheeler v. Commissioner, 127 T.C. 200, 208-209 (2006), affd. 521 F.3d 1289 (10th Cir. 2008; [sic] Cabirac v. Commissioner, 120 T.C. 163, 170 (2003).

Petitioner has the burden of proving that respondent's determinations are in error, except that respondent must prove by clear and convincing evidence that petitioner's failure to file was fraudulent. See Rule 142, Tax Court Rules of Practice and Procedure, and sec. 6651(f), I.R.C. Petitioner has failed to submit any relevant information to demonstrate that there is a legitimate dispute about any relevant fact, that respondent is not entitled to a decision as a matter of law, or that petitioner is not liable for the income tax deficiency and the additions to tax determined in the notice of deficiency. In addition, by reason of the deemed admissions, respondent has satisfied his burden of proving that petitioner's failure to file a return for 2002 was fraudulent. See Brian M. DiMercurio v. Commissioner, T.C. Memo. 2009-225. We conclude, therefore, that respondent's motion for summary judgment should be granted and that decision should be entered accordingly.

Upon consideration of the above, it is hereby

ORDERED that respondent's motion for summary judgment, filed May 29, 2009, is granted. It is further

ORDERED and DECIDED that there is a deficiency in income tax due from petitioner for 2002 of $328,190. It is further

ORDERED and DECIDED that there is an

addition to tax under section 6651(f), I.R.C., due from petitioner for 2002 of $237,937.75; that there is an addition to tax under section 6651(a)(2), I.R.C., due from petitioner for 2002 of $82,047.50; and that there is an addition to tax under section 6654, I.R.C. due from petitioner for 2002 of $10,967.16.

(Signed) L. Paige Marvel
L. Paige Marvel
Judge

ENTERED: **DEC 1 6 2009**

Non-judicial Decision-making – on appeal

2010 Apr 30—First unconsented-to clerical "ruling"

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 10-1584

Lester R. Ramer,
Appellant,

v.

Commissioner of Internal Revenue,
Appellee

Appeal from Tax Court, Internal Revenue Service
(11623-08)

ORDER

Lester R. Ramer's motion to correct, modify, or reconstruct the record is hereby ordered taken with the case for consideration by the panel to which this case is submitted for disposition on the merits.

April 30, 2010

Order Entered Under Rule 27B(a):
Clerk, U.S. Court of Appeals, Eighth Circuit

/s/ Michael E. Gans

2010 May 19—Second unconsented-to clerical "ruling"

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 10-1584

Lester R. Ramer,
Appellant,

v.

Commissioner of Internal Revenue,
Appellee

Appeal from Tax Court, Internal Revenue Service
(11623-08)

ORDER

Appellant's motion to strike the clerk's order of April 30, 2010 is denied. Appellant's attention is directed to Eighth Circuit Rule 27B, which was established pursuant to Federal Rules of Appellate Procedure 27 and 47 and authorizes the Clerk of the Court "to enter orders on behalf of the court in procedural matters."

May 19, 2010

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit

/s/ Michael E. Gans

2010 Jun 9—Third unconsented-to clerical "ruling"

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 10-1584

Lester R. Ramer,

Appellant,

v.

Commissioner of Internal Revenue,
Appellee

Appeal from Tax Court, Internal Revenue Service
(11623-08)

ORDER

Appellant Lester R. Ramer's motion to strike is hereby ordered taken with the case for consideration by the panel to which this case is submitted for disposition on the merits.

June 09, 2010

Order Entered Under Rule 27B(a):
Clerk, U.S. Court of Appeals, Eighth Circuit

/s/ Michael E. Gans

Additional "tax court" "rulings" [that were also filed]

2008 May 20—COLVIN's *sua sponte* "order" striking parties/capacities [4]

UNITED STATES TAX COURT
Washington, DC 20217

Lester R. Ramer and LESTER R. RAMER Petitioner,	)	Docket No. 11623-08
v.	)	
COMMISSIONER OF INTERNAL REVENUE, Respondent.	)	

O R D E R

For cause, it is

ORDERED that the caption of this case is amended to read, "Lester R. Ramer , Petitioner(s) v. Commissioner of Internal Revenue, Respondent."

(Signed) John O. Colvin
Chief Judge

Dated: Washington, D.C.
May 20, 2008

SERVED May 20 2008

2008 Jul 16—COLVIN's *sua sponte* TCR 51 motion/"order" [6]

UNITED STATES TAX COURT
WASHINGTON, DC 20217

LESTER R. RAMER,	)	
Petitioner	)	
v.	)	Docket No. 11623-08.
COMMISSIONER OF	)	
INTERNAL REVENUE,	)	
Respondent	)	

ORDER

Upon due consideration of the petition filed in this case and respondent's Motion To Dismiss for Failure To State a Claim Upon Which Relief Can Be Granted and To Impose a Penalty Under I.R.C. § 6673, filed June 27, 2008, it is

ORDERED that, on or before September 5, 2008, petitioner shall file a proper amended petition which contains clear and concise assignments of each and every error that petitioner alleges to have been committed by the Commissioner in the determination of the deficiencies and the additions to tax and/or penalties in dispute in this case, and clear and concise lettered statements of the facts on which petitioner bases the assignments of error. See Rule 34(b), Tax Court Rules of Practice and Procedure; Jarvis v. Commissioner, 78 T.C. 646, 658 (1982) . It is further

ORDERED that, on or before September 5, 2008, petitioner shall file an Objection, if any to

respondent's Motion To Dismiss for Failure To State a Claim Upon Which Relief Can be Granted and To Impose a Penalty Under I.R.C. § 6673.

(Signed) John O. Colvin

John O. Colvin
Chief Judge

Dated: Washington, D.C.
July 16, 2008

2008 Sep 12—COLVIN's first "bulldozing" "order" "assigning" (and referring case to) first unconsented-to STJ [17]

UNITED STATES TAX COURT
WASHINGTON, D.C. 20217

LESTER R. RAMER, Petitioner	)	
v.	)	Docket No. 11623-08
COMMISSIONER OF INTERNAL REVENUE, Respondent	)	

ORDER

On June 27, 2008, respondent filed a Motion To Dismiss for Failure to State a Claim Upon Which Relief Can be Granted and To Impose a Penalty Under I.R.C. § 6673. By Order dated July 16, 2008,

the Court directed petitioner to file a proper amended petition and an objection, if any, to respondent's motion.

On September 4, 2008, petitioner filed a Declination to Amend and a Response to respondent's motion to dismiss.

Upon due consideration, it is

ORDERED that respondent's Motion To Dismiss for Failure to State a Claim Upon Which Relief Can be Granted and To Impose a Penalty Under I.R.C. § 6673, filed June 27, 2008, is assigned to Special Trial Judge Robert N. Armen, Jr.

(Signed) John O. Colvin

John O. Colvin
Chief Judge

Dated: Washington, D.C.
September 12, 2008

2008 Sep 26—The first unconsented-to STJ's one "ruling" [19]

UNITED STATES TAX COURT
Washington, D.C. 20217

LESTER R. RAMER,	)	
Petitioner,	)	
v.	)	Docket No. 11623-08
COMMISSIONER OF	)	
INTERNAL REVENUE,	)	
Respondent.	)	

O R D E R

This case is now before the Court on respondent's Motion To Dismiss For Failure To State A Claim Upon Which Relief Can Be Granted And To Impose A Penalty Under I.R.C. § 6673, filed July [sic] 27, 2008. Pursuant to our Order dated July 16, 2008, directing petitioner to file (1) an objection (if any) to respondent's motion and (2) a proper amended petition consistent with the pleading requirements of Tax Court Rule 34(b), petitioner filed a Response to respondent's motion on September 4, 2008, and a Declination to Amend, also on September 4, 2008. [1]

Petitioner commenced this case in response to respondent's notice of deficiency dated February 13, 2008, in which respondent determined a substantial deficiency in petitioner's Federal income tax for 2002, together with additions to tax under, inter alia, section 6651(f) for fraudulent failure to file. [2]

---

[1] Petitioner also filed on September 4, 2008, eight frivolous motions, all of which were summarily denied by the Court.

[2] All section references are to the Internal Revenue Code of 1986, as amended.

Respondent's motion overlooks the fact that the petition, regardless of how may frivolous and groundless allegations it may contain, does expressly place in issue the addition to tax under section 6641(f) for fraudulent failure to file. In any case in which fraud is an issue, the Commissioner bears not only the burden of production, see sec. 7491(c), but also the burden [⊥ 2] of proof, i.e., the ultimate burden of persuasion, see sec. 7454(a); Rule 142(b), Tax Court Rules of Practice and Procedure; Clayton v. Commissioner, 102 T.C. 632, 651-653 (1994). Because fraud is an intentional wrongdoing designed to evade taxes believed to be owing, the Commissioner must show that the taxpayer failed to file a required return with the intent to evade taxes known or believed to be owing by conduct intended to conceal, mislead, or otherwise prevent the collection of taxes. Pearson v. Commissioner, T.C. Memo. 2007-341. The Commissioner may not simply rely on the taxpayer's failure to show error in the determination of the deficiency; indeed, the mere failure to report income is not sufficient to establish fraud. Id.

Premises considered, it is

ORDERED that respondent's Motion To Dismiss For Failure To State A Claim Upon Which Relief Can Be Granted And To Impose A Penalty Under I.R.C. § 6673, filed July [sic] 27, 2008, is denied.

(Signed) Robert N. Armen, Jr.

Robert N. Armen, Jr.
Special Trial Judge

Dated: Washington, D.C.
September 26, 2008

2009 Feb 6—Unconsented-to clerical "order" setting a deadline [25]

UNITED STATES TAX COURT
WASHINGTON, D.C. 20217

February 06, 2009

Lester R. Ramer
Petitioner,

v. Docket No. 11623-08

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

NOTICE OF FILING OF MOTION
FOR ORDER UNDER RULE 37

You are hereby notified that the respondent on February 2, 2009 , filed a motion in the above-entitled case for an order that the specified affirmative allegations in the answer be deemed admitted.

If petitioner files a reply as required by Rule 37(a) and (b) of this Court's Rules on or before March 2, 2009 , respondent's motion will be denied. If petitioner does not file a reply as directed herein, the Court will grant respondent's motion and deem admitted for purposes of this case the affirmative allegations in the answer.

Robert R. Di Trolio
Clerk of the Court

Lester R. Ramer
11717 Stage Coach Rd.
Gravette, AR 72736

2009 Feb 18—COLVIN's second "bulldozing" "order" "assigning" (and referring case to) second unconsented-to STJ [26]

UNITED STATES TAX COURT
WASHINGTON, DC 20217

LESTER R. RAMER,	)	
Petitioner	)	
v.	)	Docket No. 11623-08.
COMMISSIONER OF	)	
INTERNAL REVENUE,	)	
Respondent	)	

ORDER

Upon due consideration of the Motion for Entry of Order That Undenied Allegations in Answer Be Deemed Admitted, filed February 2, 2009, by respondent in the above-captioned case, it is

ORDERED that respondent's just-referenced motion is assigned to Special Trial Judge Lewis R. Carluzzo for disposition.

(Signed) John O. Colvin

John O. Colvin
Chief Judge

Dated: Washington, D.C.
February 18, 2009

2009 Mar 2—The second unconsented-to STJ's first "ruling" [27]

UNITED STATES TAX COURT
Washington, D.C. 20217

LESTER R. RAMER,	)	
Petitioner,	)	
v.	)	Docket No. 11623-08
COMMISSIONER OF	)	
INTERNAL REVENUE,	)	
Respondent.	)	

ORDER

This case is before the Court on respondent's Motion for Entry of Order That Undenied Allegations in Answer Be Deemed Admitted, filed February 2, 2009.

On February 13, 2009, the Court received from petitioner the following documents, styled: (1) Ramer's Response to Comm'r's Motion to Deem Answer "Admitted To"; (2) Ramer's Motion to Strike Comm'r's Motion to Deem "Answer" "Admitted To"; (3) Ramer's Motion to Strike Comm'r's Answer" [sic]; and (4) Ramer's First Probable Cause Affidavit. The first three documents appear to relate to respondent's motion. The fourth document raises an objection previously ruled upon and rejected. Otherwise, the intent of the fourth document is not apparent.

None of the documents are [sic] properly captioned. See Rule 23(a), Tax Court Rules of Practice and Procedure. Consequently, it is

ORDERED that the Clerk of the Court return, unfiled, the above-referenced documents to petitioner with the copy of this order served upon him. It is further

ORDERED that petitioner's reply to respondent's answer is now due on or before March 20, 2009.

(Signed) Lewis R. Carluzzo

Lewis R. Carluzzo
Special Trial Judge

Dated: Washington, D.C.
March 2, 2009

2009 Mar 19—The second unconsented-to STJ's second "ruling" [28]

UNITED STATES TAX COURT
Washington, D.C. 20217

LESTER R. RAMER,	)
Petitioner,	)
v.	) Docket No. 11623-08
COMMISSIONER OF INTERNAL REVENUE,	)
Respondent.	)

ORDER

On March 6, 2009, the Court received from petitioner a document styled, "Ramer's Verified Motion To Strike Clerk's 'Order' of 6 February 2009". On March 12, 2009, the Court received from

petitioner a document styled, "Ramer's Verified Motion To Strike Colvin's 'Assignment' 'Order' of 18 February 2009". Because the documents are not properly captioned, see Rule 23(a), Tax Court Rules of Practice and Procedure, it is

ORDERED that the Clerk of the Court return, unfiled, the above-referenced documents and related copies to petitioner with the copy of this order served upon him.

(Signed) Lewis R. Carluzzo

Lewis R. Carluzzo
Special Trial Judge

Dated: Washington, D.C.
March 19, 2009

2009 Mar 26—The second unconsented-to STJ's third "ruling" [29]

UNITED STATES TAX COURT
Washington, D.C. 20217

LESTER R. RAMER,	)	
Petitioner,	)	
v.	)	Docket No. 11623-08
COMMISSIONER OF INTERNAL REVENUE,	)	
Respondent.	)	

ORDER

This case is before the Court on respondent's Motion for Entry of Order That Undenied Allegations

in Answer Be Deemed Admitted, filed February 2, 2009. In a notice dated February 6, 2009, petitioner was advised that if a reply to respondent's answer was filed on or before March 2, 2009, respondent's motion would be denied. The notice further advised petitioner that if he failed to file a reply by the designated date, respondent's motion would be granted.

On February 13, 2009, the Court received from petitioner four documents, none of which were [sic] properly captioned, and none of which, after liberal construction, could be considered a reply to respondent's answer. Because the documents were not properly captioned, they were returned, unfiled, to petitioner by Order dated March 2, 2009. In that Order, petitioner was given until March 20, 2009, to reply to respondent's answer.

On March 6, 2009, the Court received from petitioner a document styled, "Ramer's Verified Motion To Strike Clerk's 'Order' of 6 February 2009". On March 12, 2009, the Court received from petitioner a document styled, "Ramer's Verified Motion To Strike Colvin's 'Assignment' 'Order' of 18 February 2009". After liberally construing each document, neither could be considered a reply to respondent's answer. Because neither document was properly captioned, both were returned, unfiled, to petitioner by Order dated March 19, 2009.

On March 23, 2009, the Court received from petitioner a document styled, "Ramer' s Verified Statement". In this document petitioner once again challenges the Court's authority. As with the other documents previously returned unfiled to petitioner,

after liberal construction, nothing in the document received on [⊥ 2] March 23, 2009, could be considered a reply to respondent's answer, and once again the document is not properly captioned. Petitioner's attention is, once again, invited to Rule 23(a), Tax Court Rules of Practice and Procedure.

The manner in which petitioner has elected to proceed in this case since the issuance of the above-referenced notice on February 6, 2009, and statements contained in the document received from petitioner on March 23, 2009, make it clear that petitioner has no intention to reply to respondent's answer.

Premises considered, it is

ORDERED that the Clerk of the Court return, unfiled, the document and related copies received from petitioner on March 23, 2009, to petitioner with the copy of this order served upon him. It is further

ORDERED that respondent's Motion for Entry of Order That Undenied Allegations in Answer Be Deemed Admitted, filed February 2, 2009, is granted.

(Signed) Lewis R. Carluzzo

Lewis R. Carluzzo
Special Trial Judge

Dated: Washington, D.C.
March 26, 2009

2009 Jun 2—Unconsented-to clerical "order" setting a deadline [31]

UNITED STATES TAX COURT
WASHINGTON, D.C. 20217

June 02, 2009

Lester R. Ramer
Petitioner,

v. Docket No. 11623-08

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

NOTICE OF FILING

Petitioner (is) ([redacted]) notified that Respondent on May 29, 2009, filed in the above-captioned case, a Motion for Summary Judgment, a copy of which ([redacted]) (has been) served.

If there is an objection, a notice of objection which set forth the basis for the objection, must be filed on or before July 2, 2009.

Robert R. Di Trolio
Clerk of the Court

Lester R. Ramer
11717 Stage Coach Rd.
Gravette, AR 72736

2009 Oct 22—Unconsented-to clerical "order" setting a trial date [32]

UNITED STATES TAX COURT
Washington, D.C. 20217

October 22, 2009

Lester R. Ramer
Petitioner,

v. Docket No.: 11623-08

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Trial at: Courtroom #3, 3rd Floor
United States Bankruptcy Ct.
300 West Second Street
Little Rock, AR 72201

NOTICE SETTING CASE FOR TRIAL

The parties are hereby notified that the above-entitled case is set for trial at the Trial Session beginning on March 22, 2010 .

The calendar for that Session will be called at 10:00 A.M. on that date and both parties are expected to be present at that time and be prepared to try the case. YOUR FAILURE TO APPEAR MAY RESULT IN DISMISSAL OF THE CASE AND ENTRY OF DECISION AGAINST YOU.

Your attention is called to the Court's requirement that, if the case cannot be settled on a mutually satisfactory basis, the parties, before trial,

must agree in writing to all facts and all documents about which there should be no disagreement. Therefore, the parties should contact each other promptly and cooperate fully so that the necessary steps can be taken to comply with this requirement. YOUR FAILURE TO COOPERATE MAY ALSO RESULT IN DISMISSAL OF THE CASE AND ENTRY OF DECISION AGAINST YOU.

If there are a number of cases to be tried, the Court will fix the time of each trial at the end of the calendar call. The Court makes every effort to suit the convenience of the petitioners in fixing trial times, but because of conflicting requests received from petitioners, the final determination of trial times must rest in the Court's discretion.

Robert R. Di Trolio
Clerk of the Court

Lester R. Ramer
11717 Stage Coach Rd.
Gravette, AR 72736

2009 Oct 22—Custom-dated and -signed but case-less "Standing" Pre-trial "Order" [33]

UNITED STATES TAX COURT
WASHINGTON, DC
www.ustaxcourt.gov

STANDING PRETRIAL ORDER

To the parties: The attached Notice Setting Case for Trial provides that this case is calendared for trial at the trial session commencing on MONDAY, MARCH 22, 2010.

The parties shall begin discussions as soon as practicable for purposes of settlement and/or preparation of a stipulation of facts. Valuation cases and reasonable compensation cases are generally susceptible of settlement, and the Court expects the parties to negotiate in good faith with this objective in mind. All minor issues should be settled so that the Court can focus on the issue(s) needing a Court decision.

If difficulties are encountered in communicating with another party or in complying with this order, the affected party should promptly advise the Court in writing, with a copy to each other party, or in a conference call among the parties and the trial Judge.

Continuances will be granted only in exceptional circumstances. See Rule 133, Tax Court Rules of Practice and Procedure. (The Court's Rules are available at www.ustaxcourt.gov.) Even joint motions for continuance will not routinely be granted.

The Court may impose appropriate sanctions,

including dismissal, for any unexcused failure to comply with this Order. See Rule 131(b). Such failure may also be considered in relation to sanctions against and disciplinary proceedings involving counsel. See Rule 202(a).

To facilitate an orderly and efficient disposition of all cases on the trial calendar, it is hereby

ORDERED that all facts shall be stipulated to the maximum extent possible. All documentary and written evidence shall be marked and stipulated in accordance with Rule 91(b), unless the evidence is to be used solely to impeach the credibility of a witness. Objections may be preserved in the stipulation. If a complete stipulation of facts is not ready for submission at the commencement of the trial or at such other time ordered by the Court, and if the Court determines that this is the result of either party's failure to fully cooperate [sic] in the preparation thereof, the Court may order sanctions against the uncooperative party. Any documents or materials which a party expects to utilize, in the event of trial (except solely for impeachment), but which are not stipulated, shall be identified in writing and exchanged by the parties at least 14 days before the first day of the trial session. The Court may refuse to receive in evidence any document or material not so stipulated or exchanged, unless otherwise agreed by [⊥ 2] the parties or allowed by the Court for good cause shown. It is further

ORDERED that unless a basis of settlement has been reached, each party shall prepare a pretrial memorandum substantially in the form attached hereto, which shall indicate the current status of the

case. Each party shall submit the Pretrial Memorandum directly to the undersigned and to the opposing party not less than 14 days before the first day of the trial session. It is further

ORDERED that, if the status of the case changes from that reported in a party's pretrial memorandum, the party shall submit to the undersigned and to the opposing party a Final Status Report substantially in the form attached hereto. It is further

ORDERED that witnesses shall be identified in the Pretrial Memorandum with a brief summary of the anticipated testimony of such witnesses. Witnesses who are. not identified will not be permitted to testify at the trial without leave of the Court upon sufficient showing of cause. Unless otherwise permitted by the Court upon timely request, expert witnesses shall prepare a written report which shall be submitted directly to the undersigned and served upon each other party at least 30 days before the first day of the trial session. An expert witness's testimony may be excluded-for failure to comply with this Order and the provisions of Rule 143(f). It is further

ORDERED that where a basis of settlement has been reached, a stipulated decision shall be submitted to the Court prior to or at the call of the calendar on the first day of the trial session. Additional time for submitting a stipulated decision will be granted only where it is clear that settlement has been approved by all parties, and the parties shall be prepared to state for the record the basis of settlement and the reasons for delay. The Court will

specify the date by which the stipulated decision and any related settlement documents will be due. It is further

ORDERED that all parties shall be prepared for trial at any time during the term of the trial session unless a specific date has been previously set by the Court. It is further

ORDERED that every pleading, motion, letter or other document (with the exception of posttrial briefs, see Rule 151(c)) submitted to the Court by any party subsequent to the date of the Notice Setting Case For Trial shall be served by the party upon every other party or counsel for a party and shall contain, a certificate of service as specified in Rule 21(b).

Dated: October 22, 2009

/s/ L. Paige Marvel
L. Paige Marvel
Judge

2009 Oct 26—MARVEL's witness-tampering, Record-tampering "order" [34]

UNITED STATES TAX COURT
WASHINGTON, DC 20217

LESTER R. RAMER,	)
Petitioner	)
v.	) Docket No. 11623-08.
COMMISSIONER OF	)
INTERNAL REVENUE,	)
Respondent	)

ORDER

Petitioner has continually submitted documents with incorrect captions, and many of the documents contain frivolous and groundless positions. The Court has corrected the captions on several documents by striking out the incorrect portions. For cause, it is

ORDERED that the Clerk's Office shall file the following documents which have corrected captions, as of October 26, 2009, and shall serve a copy of each document on petitioner: (1) "RAMER'S RESPONSE TO COMM'R'S MOTION FOR SUMMARY JUDGMENT"; (2) "RAMER'S VERIFIED MOTION TO STRIKE COMM'R'S MOTION FOR SUMMARY JUDGMENT"; (3) "RAMER'S MOTION FOR. JUDGMENT—COMM'R HAS NO STANDING"; and (4) "RAMER'S VERIFIED MOTION TO STRIKE CLERK'S 'ORDER' OF 2 JUNE 2009". It is further

ORDERED that the Clerk's Office shall return the document titled "RAMER'S EXHIBITS" to petitioner unfiled.

Petitioner is warned that if he submits any

further documents with incorrect captions, they will be returned to him unfiled, and he is also warned that if he continues to submit documents to this Court that contain frivolous and groundless positions, the Court in its decision may require petitioner to pay to the United States a penalty not in excess of $25,000, pursuant to I.R.C. section 6673(a).

(Signed) L. Paige Marvel

L. Paige Marvel
Judge

Dated: Washington, D.C.
October 26, 2009

Rule 14.1(i)(iii)—Rehearing, or other extension

None.

Rule 14.1(i)(iv)—Judgment of different date

None.

Rule 14.1(i)(v)—Statutes and Rules

TCRs

TCR 23(a)(3)

RULE 23. FORM AND STYLE OF PAPERS

(a) Caption, Date, and Signature Required:

All papers filed with the Court shall have a caption, shall be dated, and shall be signed as follows:

(3) *Signature:* The original signature, either of the party or the party's counsel, shall be subscribed in writing to the original of every paper filed by or for that party with the Court, except as otherwise provided by these Rules. An individual rather than a firm name shall be used, except that the signature of a petitioner corporation or unincorporated association shall be in the name of the corporation or association by one of its active and authorized officers or members, as for example "Mary Doe, Inc.,

by Richard Roe, President". The name, mailing address, and telephone number of the party or the party's counsel, as well as counsel's Tax Court bar number, shall be typed or printed immediately beneath the written signature. The mailing address of a signatory shall include a firm name if it is an essential part of the accurate mailing address.

TCR 34(b)(4)

RULE 34. PETITION

(b) Content of Petition in Deficiency or Liability Actions:

The petition in a deficiency or liability action shall contain (see Form 1, Appendix I):

(4) Clear and concise assignments of each and every error which the petitioner alleges to have been committed by the Commissioner in the determination of the deficiency or liability. **The assignments of error shall include issues in respect of which the burden of proof is on the Commissioner. Any issue not raised in the assignments of error shall be deemed to be conceded.** Each assignment of error shall be separately lettered.

(emphasis added).

TCR 36(a)

RULE 36. ANSWER

(a) Time To Answer or Move:

The Commissioner shall have 60 days from the date of service of the petition within which to file an answer, or 45 days from that date within which to move with respect to the petition.

TCR 40

RULE 40. DEFENSES AND OBJECTIONS MADE BY PLEADING OR MOTION

Every defense, in law or fact, to a claim for relief in any pleading shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may, at the option of the pleader, be made by motion: (a) Lack of jurisdiction, and (b) failure to state a claim upon which relief can be granted. If a pleading sets forth a claim for relief to which the adverse party is not required to file a responsive pleading, then such party may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting failure to state a claim on which relief can be granted, matters outside the pleading are to be presented, then the motion shall be treated as one for summary judgment and disposed of as provided in Rule 121, and the parties shall be given an opportunity to present all material made pertinent to a motion under Rule 121.

TCR 51

RULE 51. MOTION FOR MORE DEFINITE STATEMENT

(a) General: If a pleading to which a responsive pleading is permitted or required is so vague or ambiguous that ***a party*** cannot reasonably be required to frame a responsive pleading, then ***the party*** may move for a more definite statement before interposing a responsive pleading. **The motion shall point out the defects complained of and the details desired.** See Rules 70 and 90 for procedures available to narrow the issues or to elicit further information as to the facts involved or the positions of the parties.

(all emphasis added).

TCR 54 (as amended)

Rule 54 is deleted and replaced with the following.

RULE 54. TIMELY FILING AND JOINDER OF MOTIONS

(a) Timely Filing: Unless otherwise permitted by the Court, motions must be made timely.

(b) Joinder of Motions: Unless otherwise permitted by the Court, motions shall be separately stated and not joined together, except that motions may be joined in the following instances: (1) Motions

under Rules 51 and 52 directed to the same pleading or other paper; and (2) motions under Rule 56 for the review of a jeopardy assessment and for the review of a jeopardy levy, but only if the assessment and the levy are the subject of the same written statement required by Code section 7429(a)(1).

Explanation

Rule 54 is amended to clarify that the Court in appropriate circumstances may permit the filing of joined motions in addition to those specified in the Rule.

TCR 60 (title only)

RULE 60. PROPER PARTIES; CAPACITY

TCR 61 (title only)

RULE 61. PERMISSIVE JOINDER OF PARTIES

TCR 70(a)(2)

DISCOVERY

RULE 70. GENERAL PROVISIONS

(a) General:

(1) *Methods and Limitations of Discovery:*

(2) *Time for Discovery:* Discovery shall not be commenced, without leave of Court, before the expiration of 30 days after joinder of issue (see Rule 38). Discovery shall be completed and any motion to compel such discovery shall be filed, unless otherwise authorized by the Court, no later than 45 days prior to the date set for call of the case from a trial calendar.

TCR 90(a)

ADMISSIONS AND STIPULATIONS

RULE 90. REQUESTS FOR ADMISSION

(a) Scope and Time of Request:

Requests for admission shall not be commenced, without leave of Court, before the expiration of 30 days after joinder of issue (see Rule 38). Requests for admission shall be completed and any motion to review under paragraph (e) hereof shall be filed, unless otherwise authorized by the Court, no later

than 45 days prior to the date set for call of the case from a trial calendar.

TCR 91

RULE 91. STIPULATIONS FOR TRIAL

(a) Stipulations Required:

(1) *General:* The parties are required to stipulate, to the fullest extent to which complete or qualified agreement can or fairly should be reached, all matters not privileged which are relevant to the pending case, regardless of whether such matters involve fact or opinion or the application of law to fact. Included in matters required to be stipulated are all facts, all documents and papers or contents or aspects thereof, and all evidence which fairly should not be in dispute. Where the truth or authenticity of facts or evidence claimed to be relevant by one party is not disputed, an objection on the ground of materiality or relevance may be noted by any other party but is not to be regarded as just cause for refusal to stipulate. The requirement of stipulation applies under this Rule without regard to where the burden of proof may lie with respect to the matters involved. Documents or papers or other exhibits annexed to or filed with the stipulation shall be considered to be part of the stipulation.

(2) *Stipulations To Be Comprehensive:* The fact that any matter may have been obtained through discovery or requests for admission or through any other authorized procedure is not grounds for

omitting such matter from the stipulation. Such other procedures should be regarded as aids to stipulation, and matter obtained through them which is within the scope of subparagraph (1) must be set forth comprehensively in the stipulation, in logical order in the context of all other provisions of the stipulation.

(b) Form:
Stipulations required under this Rule shall be in writing, signed by the parties thereto or by their counsel, and shall observe the requirements of Rule 23 as to form and style of papers, except that the stipulation shall be filed with the Court in duplicate and only one set of exhibits shall be required. Documents or other papers, which are the subject of stipulation in any respect and which the parties intend to place before the Court, shall be annexed to or filed with the stipulation. The stipulation shall be clear and concise. Separate items shall be stated in separate paragraphs, and shall be appropriately lettered or numbered. Exhibits attached to a stipulation shall be numbered serially; i.e., 1, 2, 3, etc. The exhibit number shall be followed by "P" if offered by the petitioner, e.g., 1–P; "R" if offered by the respondent, e.g., 2–R; or "J" if joint, e.g., 3–J.

(c) Filing:
Executed stipulations prepared pursuant to this Rule, and related exhibits, shall be filed by the parties at or before commencement of the trial of the case, unless the Court in the particular case shall otherwise specify. A stipulation when filed need not be offered formally to be considered in evidence.

(d) Objections:
Any objection to all or any part of a stipulation should be noted in the stipulation, but the Court will consider any objection to a stipulated matter made at the commencement of the trial or for good cause shown made during the trial.

(e) Binding Effect:
A stipulation shall be treated, to the extent of its terms, as a conclusive admission by the parties to the stipulation, unless otherwise permitted by the Court or agreed upon by those parties. The Court will not permit a party to a stipulation to qualify, change, or contradict a stipulation in whole or in part, except that it may do so where justice requires. A stipulation and the admissions therein shall be binding and have effect only in the pending case and not for any other purpose, and cannot be used against any of the parties thereto in any other case or proceeding.

(f) Noncompliance by a Party:
(1) *Motion To Compel Stipulation:*
If, after the date of issuance of trial notice in a case, a party has refused or failed to confer with an adversary with respect to entering into a stipulation in accordance with this Rule, or a party has refused or failed to make such a stipulation of any matter within the terms of this Rule, the party proposing to stipulate may, at a time not later than 45 days prior to the date set for call of the case from a trial calendar, file a motion with the Court for an order directing the delinquent party to show cause why the matters covered in the motion should not be deemed admitted for the purposes of the case. The motion

shall

(A) show with particularity and by separately numbered paragraphs each matter which is claimed for stipulation;

(B) set forth in express language the specific stipulation which the moving party proposes with respect to each such matter and annex thereto or make available to the Court and the other parties each document or other paper as to which the moving party desires a stipulation;

(C) set forth the sources, reasons, and basis for claiming, with respect to each such matter, that it should be stipulated;

(D) show that opposing counsel or the other parties have had reasonable access to those sources or basis for stipulation and have been informed of the reasons for stipulation; and

(E) show proof of service of a copy of the motion on opposing counsel or the other parties.

(2) *Procedure:*

Upon the filing of such a motion, an order to show cause as moved shall be issued forthwith, unless the Court shall direct otherwise. The order to show cause will be served by the Clerk, with a copy thereof sent to the moving party. Within 20 days of the service of the order to show cause, the party to whom the order is directed shall file a response with the Court, with proof of service of a copy thereof on opposing counsel or the other parties, showing why the matters set forth in the motion papers should not

be deemed admitted for purposes of the pending case. The response shall list each matter involved on which there is no dispute, referring specifically to the numbered paragraphs in the motion to which the admissions relate. Where a matter is disputed only in part, the response shall show the part admitted and the part disputed. Where the responding party is willing to stipulate in whole or in part with respect to any matter in the motion by varying or qualifying a matter in the proposed stipulation, the response shall set forth the variance or qualification and the admission which the responding party is willing to make. Where the response claims that there is a dispute as to any matter in part or in whole, or where the response presents a variance or qualification with respect to any matter in the motion, the response shall show the sources, reasons, and basis on which the responding party relies for that purpose. The Court, where it is found appropriate, may set the order to show cause for a hearing or conference at such time as the Court shall determine.

(3) *Failure of Response:*

If no response is filed within the period specified with respect to any matter or portion thereof, or if the response is evasive or not fairly directed to the proposed stipulation or portion thereof, that matter or portion thereof will be deemed stipulated for purposes of the pending case, and an order will be issued accordingly.

(4) *Matters Considered:*

Opposing claims of evidence will not be weighed under this Rule unless such evidence is patently incredible. Nor will a genuinely controverted or doubtful issue of fact be determined in advance of

trial. The Court will determine whether a genuine dispute exists, or whether in the interests of justice a matter ought not be deemed stipulated.

TCR 120

DECISION WITHOUT TRIAL

RULE 120. JUDGMENT ON THE PLEADINGS

(a) General:
After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. The motion shall be filed and served in accordance with the requirements otherwise applicable. See Rules 50 and 54. Such motion shall be disposed of before trial unless the Court determines otherwise.

(b) Matters Outside Pleadings:
If, on a motion for judgment on the pleadings, **matters outside the pleadings are presented** to and not excluded by the Court, the motion shall be treated as one for summary judgment and **shall be disposed of as provided in Rule 121**, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 121.

TCR 121

DECISION WITHOUT TRIAL

RULE 121. SUMMARY JUDGMENT

(a) General:
Either party may move, with or without supporting affidavits, for a summary adjudication in the moving party's favor upon all or any part of the legal issues in controversy. **Such motion may be made at any time commencing 30 days after the pleadings are closed** but within such time as not to delay the trial.

TCR 182 (as amended)

RULE 182. CASES IN WHICH THE SPECIAL TRIAL JUDGE IS AUTHORIZED TO MAKE THE DECISION

Except as otherwise directed by the Chief Judge, **[N.B. *Ad hoc* rule-making? case-by-case basis?]** the following procedure shall be observed in small tax cases (as defined in Rule 170); in cases where neither the amount of the deficiency placed in dispute (within the meaning of Code section 7463), nor the amount of any claimed overpayment, exceeds $50,000; in declaratory judgment actions; and in lien or levy actions: ...

(b) Cases Involving $50,000 or Less:
Except in cases where findings of fact or opinion are

stated orally pursuant to Rule 152, a Special Trial Judge who conducts the trial of a case (other than a small tax case) where neither the amount of the deficiency placed in dispute (within the meaning of Code section 7463), nor the amount of any claimed overpayment, exceeds $50,000 shall, as soon after such trial as shall be practicable, prepare proposed findings of fact and opinion, which shall then be submitted promptly to the Chief Judge.

(c) Declaratory Judgment and Lien or Levy Actions:
A Special Trial Judge who conducts the trial of a declaratory judgment action or, except in cases where findings of fact or opinion are stated orally pursuant to Rule 152, a lien or levy action, or to whom such a case is submitted for decision, shall, as soon after such trial or submission as shall be practicable, prepare proposed findings of fact and opinion, which shall then be submitted promptly to the Chief Judge. **[N.B. Neither filed nor served; *but see Ballard v. comm'r*, 544 U.S. 40 (2005).]**

(d) Decision:
The Chief Judge may authorize the Special Trial Judge to make the decision of the Court **[N.B. *But see Gonzalez v. United States*, 553 U.S. 242 (12 May 2008) ("If the parties consent").]** in any small tax case (as defined in Rule 170); in any case where neither the amount of the deficiency placed in dispute (within the meaning of Code section 7463), nor the amount of any claimed overpayment, exceeds $50,000; in any declaratory judgment action; and in any lien or levy action, subject to such conditions and review as the Chief Judge may provide.

[effective date note omitted] (c) Procedure in Event of Assignment to a Judge:
In the event the Chief Judge decides to assign a case (other than a small tax case) to a Judge **[N.B. Cases not assigned to *another* judge are necessarily self-assigned to the chief judge; i.e., there is no such thing as a case *with* an STJ *but without* a judge.]** to prepare a report in accordance with Code section 7460 and to make the decision of the Court, the proposed findings of fact and opinion previously submitted to the Chief Judge shall be filed **[N.B. Contrast this with TCR 182(c).]** as the Special Trial Judge's recommended findings of fact and conclusions of law. Thereafter, the procedures of Rule 183(b), (c), and (d) shall apply.

(emphasis added).

TCR 183 (as amended)

RULE 183. OTHER CASES [effective date note omitted]

Except in cases subject to the provisions of Rule 182 or as otherwise provided, the following procedure shall be observed in cases tried before a Special Trial Judge:

(a) Trial and Briefs:
A Special Trial Judge shall conduct the trial of any assigned case. **[N.B. *But see Gonzalez v. United States*, 553 U.S. 242 (12 May 2008) ("If the parties consent").]** After such trial, the parties shall submit their briefs in accordance with the

provisions of Rule 151. Unless otherwise directed, no further briefs shall be filed.

(b) Special Trial Judge's Recommendations: After all the briefs have been filed by all the parties or the time for doing so has expired, the Special Trial Judge shall file recommended findings of fact and conclusions of law and a copy of the recommended findings of fact and conclusions of law shall be served in accordance with Rule 21. **[N.B. Compare and contrast this with TCR 182(c), (e).]**

(c) Objections:
Within 45 days after the service of the recommended findings of fact and conclusions of law, **[N.B. contrast this with TCR 182(c)]** a party may serve and file specific, written objections to the recommended findings of fact and conclusions of law. A party may respond to another party's objections within 30 days after being served with a copy thereof. The above time periods may be extended by the Special Trial Judge. After the time for objections and responses has passed, the Chief Judge shall assign the case to a Judge for preparation of a report in accordance with Code section 7460. **[N.B. Obviously, any case not otherwise assigned is necessarily self-assigned to, retained by, the chief judge.]** Unless a party shall have proposed a particular finding of fact, or unless the party shall have objected to another party's proposed finding of fact, the Judge may refuse to consider the party's objection to the Special Trial Judge's recommended findings of fact and conclusions of law for failure to make such a finding or for inclusion of such finding proposed by the other party, as the case may be.

(d) Action on the Recommendations:
The Judge to whom the case is assigned may adopt the Special Trial Judge's recommended findings of fact and conclusions of law, or may modify or reject them in whole or in part, or may direct the filing of additional briefs, or may receive further evidence, or may direct oral argument, or may recommit the recommended findings of fact and conclusions of law with instructions. The Judge's action on the Special Trial Judge's recommended findings of fact and conclusions of law shall be reflected in the record by an appropriate order or report. **[N.B. *See Ballard v. comm'r*, 544 U.S. 40 (2005).]** Due regard shall be given to the circumstance that the Special Trial Judge had the opportunity to evaluate the credibility of witnesses, and the findings of fact recommended by the Special Trial Judge shall be presumed to be correct.

(emphasis added).

irc § 7443A(c)

Section 7443A. Special trial judges

(a) Appointment

The chief judge may, from time to time, appoint special trial judges who shall proceed under such rules and regulations as may be promulgated by the Tax Court.

(b) Proceedings which may be assigned to special trial judges

The chief judge may assign -

(1) any declaratory judgment proceeding,

(2) any proceeding under section 7463,

(3) any proceeding where neither the amount of the deficiency placed in dispute (within the meaning of section 7463) nor the amount of any claimed overpayment exceeds $50,000,

(4) any proceeding under section 6320 or 6330, and

(5) any other proceeding which the chief judge may designate,

to be heard by the special trial judges of the court.

(c) Authority to make court decision

The court may authorize a special trial judge to make the decision of the court with respect to any proceeding described in paragraph (1), (2), (3), or (4) of subsection (b), subject to such conditions and review as the court may provide.

(emphasis added).

irc § 7458

Section 7458. Hearings

Notice and opportunity to be heard upon any proceeding instituted before the Tax Court shall be given to the taxpayer and the Secretary. If an opportunity to be heard upon the proceeding is given before a division of the Tax Court, neither the taxpayer nor the Secretary shall be entitled to notice and opportunity to be heard before the Tax Court upon review, except upon a specific order of the chief judge. Hearings before the Tax Court and its divisions shall be open to the public, and the testimony, and, if the Tax Court so requires, the argument, shall be stenographically reported. The Tax Court is authorized to contract (by renewal of contract or otherwise) for the reporting of such hearings, and in such contract to fix the terms and conditions under which transcripts will be supplied by the contractor to the Tax Court and to other persons and agencies.

irc § 7459(d)

Section 7459. Reports and decisions

(d) Effect of decision dismissing petition

If a petition for a redetermination of a deficiency has been filed by the taxpayer, a decision of the Tax Court dismissing the proceeding shall be considered as its decision that the deficiency is the amount determined by the Secretary. An order specifying

such amount shall be entered in the records of the Tax Court unless the Tax Court cannot determine such amount from the record in the proceeding, or unless the dismissal is for lack of jurisdiction.

Title 28

§ 711

Section 711. [appellate court] Clerks and employees

(a) Each court of appeals may appoint a clerk who shall be subject to removal by the court.

(b) The clerk, with the approval of the court, may appoint necessary deputies, clerical assistants and employees in such number as may be approved by the Director of the Administrative Office of the United States Courts. Such deputies, clerical assistants and employees shall be subject to removal by the clerk with the approval of the court.

(c) The clerk shall pay into the Treasury all fees, costs and other moneys collected by him and make returns thereof to the Director of the Administrative Office of the United States Courts under regulations prescribed by him.

28 U.S.C. § 711.

§ 951

Section 951. Oath of office of clerks and deputies

Each clerk of court and his deputies shall take the following oath or affirmation before entering upon their duties: "I, ___ XXX, having been appointed ___, do solemnly swear (or affirm) that I will truly and faithfully enter and record all orders, decrees, judgments and proceedings of such court, and will faithfully and impartially discharge all other duties of my office according to the best of my abilities and understanding. So help me God."

28 U.S.C. § 951.

§ 956

Section 956. [General provisions] Powers and duties of clerks and deputies

The clerk of each court and his deputies and assistants shall exercise the powers and perform the duties assigned to them by the court.

28 U.S.C. § 956.

Rules of Appellate Procedure

FED. R. APP. P. 27(b).

(b) ***Disposition of a Motion for a Procedural Order.***
The court may act on a motion for a procedural order — including a motion under Rule 26(b) — at any time without awaiting a response, **and may, by rule or by order in a particular case, authorize its clerk to act on specified types of procedural motions.** [emphasis added.] A party adversely affected by the court's, or the clerk's, action may file a motion to reconsider, vacate, or modify that action. Timely opposition filed after the motion is granted in whole or in part does not constitute a request to reconsider, vacate, or modify the disposition; a motion requesting that relief must be filed.

8TH CIR. R. 27B.

RULE 27B: ORDERS

(a) **Orders the Clerk May Grant**. The clerk has discretion to enter orders on behalf of the court in procedural matters including, but not limited to:

(1) applications to file briefs exceeding the page limits set forth in these rules and the Federal Rules of Appellate Procedure;

(2) extensions of time for filing briefs and records;

(3) extensions of time for designating the record under 8th Cir. R. 30A(b);

(4) authorization to proceed on a deferred appendix under 8th Cir. R. 30A(b)(2);

(5) corrections in briefs, pleadings, or the record;

(6) supplementation of the record;

(7) incorporation of records from former appeals;

(8) consolidation of appeals;

(9) substitution of parties;

(10) motions to appear as amicus curiae;

(11) requests by amicus curiae counsel to participate in oral argument by sharing time with other counsel;

(12) advancement or continuance of cases;

(13) appointment of counsel on appeal in cases prosecuted under the Criminal Justice Act;

(14) withdrawal of appearance in civil cases;

(15) extensions of time to file petitions for rehearing not to exceed 14 days;

(16) transmission of records to the Supreme Court for use in connection with petitions for writs of certiorari;

(17) entry of consent decrees in National Labor Relations Board cases and other governmental agency review cases; and

(18) taxation of costs under 28 U.S.C. § 1920.

If any party opposes the action requested in any of the above matters or seeks reconsideration of an order entered under this section, the clerk must submit the matter for a ruling by a judge of

this court.

(b) **Orders One Judge May Grant**. Subject to FRAP 27(c), one judge of the court may determine any motion and exercise any power including:

(1) granting leave to appeal in forma pauperis and ordering preparation of a transcript at government expense;

(2) granting appointment of counsel for an indigent defendant proceeding under 28 U.S.C. § 1915;

(3) denying a motion to dismiss under 8th Cir. R. 47A; and

(4) ordering a temporary stay of any proceeding pending the court's determination of a stay application.

(c) **All Other Matters**. A panel of three judges will act in all other matters.

(d) **Reconsideration of Orders**. Any party adversely affected by an order issued under subdivisions (a), (b), or (c) may file a motion to reconsider, vacate, or modify the order within 14 days after its entry. The motion will be referred to a three-judge panel that includes all judges who previously acted on the matter.

Rule 14.1(i)(vi)—Additional Materials

Reference to the Record will suffice

In the "tax court," each defaced document is another "secret" "order" striking parties/capacities.

Key on appeal is Ramer's motion to correct, etc., the Record, which contains all the "unfiling" "orders" and what was "unfiled."